

KF

2276

1908

Cornell University Library

BOUGHT WITH THE INCOME
FROM THE

SAGE ENDOWMENT FUND
THE GIFT OF

Henry W. Sage

1891

7235099

22/11/09

3513-1

KF 22761908

The law relating to the Interstate Commerce



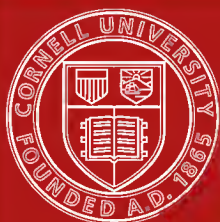
3 1924 019 905 466

law

Date Due

JAN 17 1957 R U

MAY 18 1959



Cornell University
Library

The original of this book is in
the Cornell University Library.

There are no known copyright restrictions in
the United States on the use of the text.

6076

E95

THE LAW RELATING TO THE
INTERSTATE
COMMERCE COMMISSION

THE
SHERMAN ANTI-TRUST ACT
AND THE
BUREAU OF CORPORATIONS

BY
JOHN HORATIO NELSON

OF THE
DISTRICT OF COLUMBIA BAR

THE BANKS LAW PUBLISHING CO.
NEW YORK

1908

D

JUL 30 '68

6076

E95

A.235099

COPYRIGHT, 1908, BY

THE BANKS LAW PUBLISHING COMPANY

PREFACE

It will conduce to a clearer understanding of "The Act to Regulate Commerce" to give a brief outline of its general scope, with the object of fixing the rights which it was intended to conserve or create, the wrongs which it proposed to redress and the remedies which the Act established to accomplish the purposes which the lawmakers had in view.

The causes which induced the enactment of the statute grew out of the use of railroads as the principal modern instrumentality of commerce. While shippers of merchandise are under no legal necessity to use railroads, they are so practically. The more valuable articles of traffic demand speedy and prompt movement, and the immense outlay of money required to build and maintain railroads, and the necessity of resorting, in securing the rights of way, to the power of eminent domain, in effect disable industrial merchants and shippers from themselves providing such means of carriage. From the very nature of the case, therefore, railroads are monopolies, and the evils that usually accompany monopolies soon began to show themselves and were the cause of loud complaints.

The chief complaint of the public was that from the mode in which the carriers imposed their charges it resulted that the rates were unequal; that to make good the loss resulting from the favoritism shown to particular localities, persons, or classes of business, a greater burden was placed upon the remainder of the traffic; and that through the practical monopoly acquired by the railways over the transportation business of the country the shippers were largely at the mercy of the carriers, and that as a result the business of the community, in so far as the same depended upon the use of transportation facilities, was subjected to unequal and unreasonable burdens and exactions. As the powers of the states were restricted to their own territory and did not enable them to efficiently control the management of great corporations whose roads extend through the entire country, there was a general demand that Congress, in the exercise of its plenary power over the subject

of foreign and interstate commerce, should deal with the evils complained of by a general enactment.

The Act to regulate commerce was the first effort of the general government to regulate the great transportation business of the country. That business, though of a *quasi*-public nature, and therefore subject to governmental regulation, has been carried on by private capital through corporations. The fact that it was a *quasi*-public business always prevented the owners of capital invested in it from charging, like owners of other property, any price they saw fit for its use. A reasonable compensation was all they could exact, but it must be remembered that railroads are the private property of their owners, and while from the public character of the work in which they are engaged the public has the power to prescribe rules for securing faithful and efficient service and equality between shippers and communities, yet in no proper sense is the public a general manager. It is the duty of the courts to see that legislation limiting charges for transportation is not carried beyond its clear scope and that the owners of private capital invested in the business of transportation be not deprived of their liberty of contract and right of control any further than the lawmaking power has intended that they should be.

The Commission is charged with the duty of investigating and reporting upon complaints, but it is not a Federal court under the Constitution though it exercises *quasi*-judicial powers, nor do its conclusions possess the efficacy of judicial proceedings. It performs for the United States, in respect to the power committed to it over interstate commerce, the same functions which a state can exercise in respect to purely internal commerce over which the states have exclusive control. What one sovereign may do in respect to matters within its exclusive control the other may certainly do in respect to matters over which it has exclusive authority.

The Act made it the duty of carriers subject to its provisions to charge only just and reasonable rates. To that end the duty was imposed of establishing and publishing schedules of such rates. It forbade all unjust preferences and discriminations, made it unlawful to depart from the rates in the established schedules until the same were changed as authorized by the Act, and such departure was made an offense punishable by fine or imprisonment, or both, and the prohibitions of the Act and the punishments which it imposed were directed not only against carriers but against shippers, or any person who, directly or indirectly, by any machination or device in any manner whatsoever, accomplished the result

of producing the wrongful discriminations or preferences which the Act forbade. It was made the duty of carriers subject to the Act to file with the Commission copies of established schedules, and power was conferred upon that body to provide as to the form of the schedules, and penalties were imposed for not establishing and filing the required schedules. The Commission was endowed with plenary administrative power to supervise the conduct of carriers, to investigate their affairs, their accounts and their methods of dealing, and generally to enforce the provisions of the Act. It was made the duty of the district attorneys of the United States, under the direction of the Attorney-General, to prosecute proceedings commenced by the Commission to enforce compliance with the Act. It specially provided that the carriers shall be liable to the persons injured for the full amount of damages sustained in consequence of any violation of its provisions. Power was conferred upon the Commission to hear complaints concerning violations of the Act and to investigate the same, and if such complaints were well founded, to direct not only the making of reparation to the injured persons, but to order the carrier to desist from such violation in the future. In the event of the failure of a carrier to obey the order of the Commission that body or the party in whose favor an award of reparation was made, was empowered to compel compliance by invoking the authority of the courts of the United States in the manner pointed out in the statute, *prima facie* effect in such courts being given to the findings of fact made by the Commission.

It may be stated generally that subject to the two leading prohibitions that their charges shall not be unjust and unreasonable, and that they shall not unjustly discriminate, so as to give undue preference or advantage, or subject to undue prejudice or disadvantage persons or traffic similarly circumstanced, the Act leaves common carriers as they were at common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are recognized as sound and adopted in other trades and pursuits.¹

¹ *Texas and Pacific Ry. v. Interstate Commerce Commission*, 162 U. S. 210; *Van Patten v. C., M. & St. P. Ry.*, 81 Fed. R. 549; *C., M. & St. P. Ry. v. Osborn*, 52 Fed. R. 914; *Ken. and Ind. Bridge Co. v. L. and N. Ry.*, 37 Fed. R. 613; *Texas & Pac. Ry. v. Abilene Cotton Oil Co.*, 204 U. S. 437; *Interstate Commerce Commission v. Chicago Great Western Ry.*, 209 U. S. 108.

The various provisions of the Act have been unskillfully assembled, and the intent of Congress, in many instances, must be ascertained by associating detached paragraphs and placing such as are related in logical sequence, and the result is to increase the chances of misconstruction by the tribunal charged with its interpretation and enforcement, and to confuse the minds of the lawyers who are applied to for advice and guidance. One purpose of this work, as exhibited in the Analysis of the Act, is to search out and assemble the more important provisions in numerical sequence so that a quicker and clearer conception of the substantive enactments may be had.

A further object of the Analysis of the Act is to dissect the body thereof in order to a closer study of its structure; to separate it into units; to expose it to public view in its primal elements; to strip the incongruous growth of its foliage that the trunk and its branches may be seen in proper relation to each other, and to reduce the provisions of the Act to short, concise propositions of easy comprehension.

The amending Act of June 29, 1906, revitalized the parent law and increased its efficiency. The Supreme Court, in several cases, has accorded great weight to the reports and conclusions of the Commission and "ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience," and its decisions, including its administrative rulings and opinions, are being very generally observed, and recognized and accepted as the law. In view of the importance of these decisions a special effort has been made to collect, digest and cite under the appropriate section all the latest cases adjudicating principles, together with the more important earlier decisions of the Commission and the principal cases of the Federal courts construing the several acts.

Tariff Circular 15-A, containing "Regulations governing the construction and filing of freight tariffs, and classifications and passenger fare schedules" and "Administrative Rulings and Opinions," together with "Conference Rulings of the Commission," are included in this work *in toto*. They are of great practical utility to carriers and shippers, and probably the most important documents issued by the Commission since its creation.

All acts and parts of acts imposing any duty upon the Commission have been compiled and included herein for convenience and ready access.

The Sherman Anti-Trust Act of July 2, 1890, has been embraced

herein, together with a digest of most, if not all, of the decisions of the Supreme Court construing its provisions.

Some of the decisions of the Federal courts relating to the "Power of Congress over Interstate Commerce" and the "Power of Congress to Regulate the Rates of Railways," the "Employees' Liability Act," and the "Bureau of Corporations" have been compiled and digested, and are comprehended within this work on account of their kinship to the main topic and the interest of the public in these subjects.

In order to include this work within a reasonable compass, many citations to cases considered by the Commission have been given under subject headings without any discussion of the principles involved. In this connection it may be an aid to those making researches to have a pamphlet copy of any particular case, which ordinarily will be supplied by the Commission upon request.

J. H. N.

WASHINGTON, D. C.

OCTOBER 1, 1908.

CONTENTS

CHAPTER I

	PAGE
An Analysis of the Act to Regulate Commerce	1

CHAPTER II

The Act to Regulate Commerce, Together With a Digest of the Principal Cases Relating Thereto, Decided by the Interstate Commerce Commission and the Federal Courts . . .	26
--	----

CHAPTER III

The "Elkins Act," Together With a Digest of Some of the Decisions of the Federal Courts Relating Thereto	116
--	-----

CHAPTER IV

Immunity Statutes	121
-----------------------------	-----

CHAPTER V

The Act to Expedite the Hearing and Determination of Certain Cases	123
--	-----

CHAPTER VI

The Safety Appliance Acts and a Digest of the Decisions of the Federal Courts Relating Thereto	125
--	-----

CHAPTER VII

The Act Requiring Reports of Accidents	136
--	-----

CHAPTER VIII

The Act Relating to the Hours of Service of Employees . . .	137
---	-----

CONTENTS

CHAPTER IX

	PAGE
The Arbitration Act	140

CHAPTER X

The Medal Act	149
-------------------------	-----

CHAPTER XI

District of Columbia Street Railway Act	151
---	-----

CHAPTER XII

The Act Relating to the Transportation of Explosives . . .	157
--	-----

CHAPTER XIII

Tariff Circular No. 15-A, Containing Regulations Governing the Construction and Filing of Freight Tariffs and Classifications and Passenger Fare Schedules, Administrative Rulings and Opinions and Special Circular No. 6, and Supplement No. 1 to Tariff Circular 15-A	159
--	-----

CHAPTER XIV

Administrative Rulings of the Commission in Conference . .	247
--	-----

CHAPTER XV

Tariff Circular No. 16-A, Containing Regulations Governing the Construction and Filing of Tariffs and Classifications of Express Companies, and Administrative Rulings and Opinions	272
---	-----

CHAPTER XVI

In the Matter of Legal Rates (Memorandum by Commissioner Lane)	310
--	-----

CHAPTER XVII

In re Investigations by the Commission	315
--	-----

CHAPTER XVIII

	PAGE
Cases in Which the Rulings of the Commission Were Sustained by the Courts	317
Cases in Which the Rulings of the Commission Were not Sus- tained by the Courts	318

CHAPTER XIX

Rules of Practice Before the Commission	321
---	-----

CHAPTER XX

Power of Congress Over Interstate Commerce	332
--	-----

CHAPTER XXI

Employers' Liability Act	342
------------------------------------	-----

CHAPTER XXII

The Sherman Anti-Trust Act, Together With a Digest of the Principal Decisions of the Supreme Court of the United States Construing Said Act	346
---	-----

CHAPTER XXIII

The Bureau of Corporations	362
--------------------------------------	-----

TABLE OF CASES

References are to pages.

- Abilene Cotton Oil Case (204 U. S. 426), 37, 71, 93, 112, 312.
- Adair v. United States (208 U. S. 161), 147.
- Adams v. Mo. Pac. Ry. (192 U. S. 440), 32.
- Addyston Pipe & Steel Co. v. United States (175 U. S. 211), 356, 358.
- Aikens v. Wisconsin (195 U. S. 194), 357.
- Alabama Midland Ry. Case (168 U. S. 173), 29, 48, 49, 51, 54, 55, 60, 61, 62.
- Alleged Excessive Freight Rates (4 I. C. C. 48), 40.
- Alleged Unlawful Charges for the Transportation of Coal by the L. & N. Ry. (5 I. C. C. 466), 49.
- Allen & Lewis v. Oregon, etc. (98 Fed. R. 16), 58.
- Allowances to Elevators, etc. (12 I. C. C. 85), 42.
- Allowances to Elevators (14 I. C. C. 315), 85.
- American Banana Co. v. United Fruit Co. (160 Fed. R. 184), 352.
- American Florists v. U. S. Express Co. (12 I. C. C. 120), 36, 42.
- American Sugar Refining Co. v. Penn. Sugar Refining Co. (160 Fed. R. 144), 352.
- American Union Coal Co. v. Penna. Ry. (159 Fed. R. 278), 71.
- American Warehousemen v. Ill. Cent. Ry. (7 I. C. C. 556), 49, 66.
- Ames v. Kansas (111 U. S. 449), 71.
- Ames v. Union Pac. Ry. (64 Fed. R. 165), 335, 337.
- Anderson v. United States (171 U. S. 604), 355, 361.
- Anthony Salt v. Union Pac. Ry. (5 I. C. C. 299), 56.
- Application for Suspension of Fourth Section (7 I. C. C. 593), 61.
- Armour & Co. v. United States (209 U. S. 56), 30, 68, 120.
- Armour, etc., v. United States (142 Fed. R. 808, 153 Fed. R. 1), 312.
- Armour Packing Co. v. United States (153 Fed. R. 1, 630), 48, 120.
- Atchison, etc., Ry. Co. v. Denver, etc., Ry. (110 U. S. 667), 58.
- Atchison v. Mo. Pac. Ry. (12 I. C. C. 111), 42.
- Atlantic Coast Line v. North Carolina (206 U. S. 1), 340.
- Atlantic Coast Line Ry. v. Wharton, etc. (207 U. S. 328), 42, 44.
- Baer Bros. Mercantile Co. v. Mo. Pac. Ry. Co. (13 I. C. C. 329), 29, 95, 105.
- Banana Cases (13 I. C. C. 621), 38.
- Banner Milling Co. v. N. Y. C. & H. R. Ry. (14 I. C. C. 398), 38, 81.
- Barden & Swartout v. L. V. Ry. (12 I. C. C. 193), 41.
- Beef Trust Cases (142 Fed. R. 808), 79.
- Behlmer v. Lou. & Nash. (71 Fed. R. 835), 60.
- Belt Railway of Chicago v. United States (No. Dist. of Ill., Jan. 23, 1908), 135.
- Benton Transit Co. v. B. H. St. Joe Ry. Co. (13 I. C. C. 542), 30.
- Bills of Lading (14 I. C. C. 346), 316.
- Bitterman v. Lou. & Nash. Ry. (207 U. S. 205), 59.
- Blackman v. Southern Ry. (10 I. C. C. 352), 66.
- Bocking v. Chesapeake, etc. (193 U. S. 442), 32.
- Boston Fruit & Produce Exchange (4 I. C. C. 664), 68, 80.
- Boyd v. United States (116 U. S. 616), 366, 367.
- Brewer v. Central, etc. (84 Fed. R. 257), 55, 60.
- Brimson v. I. C. C. (154 U. S. 447), 79.
- Brown v. Houston (112 U. S. 622; 114 U. S. 622), 334.
- Brown v. Maryland (12 Wheat. 446), 333.
- Brown v. Walker (161 U. S. 591), 79.
- Buckeye Buggy Co. v. C., C., & St. L. Ry. (9 I. C. C. 620), 49.
- Budd v. New York (143 U. S. 517), 335.
- Burgess v. Trans. Freight Bureau (31 I. C. C. 668), 38, 39, 93.
- Burlington, etc., Ry. v. Dey (82 Iowa, 312), 338.
- Burnham v. Fields (157 Fed. R. 246) 113.

References are to pages.

- C., B. & Q. Ry. v. United States (157 Fed. R. 830), 120.
 C., H. & D. Ry. v. I. C. C. (206 U. S. 142), 56.
 California Com. Asso. v. Wells, Fargo & Co. (14 I. C. C. 422), 49.
 Calloway v. L. & N. Ry. (7 I. C. C. 431), 61.
 Camden Iron Works v. U. S. (158 Fed. R. 561), 120.
 Cannon v. M. & O. Ry. (11 I. C. C. 537), 36.
 Capehart, etc., v. L. & N. Ry. (4 I. C. C. 265), 58, 96.
 Capital Gas Co. v. Ry. Co. (11 I. C. C. 104), 53.
 Cardiff Coal Co. v. C., M. & St. P. Ry. (13 I. C. C. 460), 67.
 Carey et al. v. E. S. Ry. (7 I. C. C. 286), 29.
 Carr v. N. P. Ry. (9 I. C. C. 1), 66.
 Cattle Raisers v. C., B. & Q. Ry. (10 I. C. C. 83), 97.
 Cattle Raisers' Assn. v. M., K. & T. Ry. (12 I. C. C. 1; 13 I. C. C. 418), 84.
 Cattle Raisers' Assn. of Texas v. Ry. Co. (13 I. C. C. 21, 418), 67.
 Cattle Raisers v. F. W. & D. C. Ry. (7 I. C. C. 513), 80, 97.
 Central, etc., v. L. & N. Ry. (192 U. S. 568), 58, 70.
 Central of Ga. Ry. v. McLendon (157 Fed. R. 961), 71.
 Central of Ga. Ry. v. United States (157 Fed. R. 893), 134, 135.
 Central Stock Yards v. L. & N. Ry. (118 Fed. R. 113), 55.
 Central Yellow Pine Assn. v. V., S. & R. Ry. (10 I. C. C. 193), 50.
 Chaffee v. United States (18 Wall. 518), 131.
 Charges for Transportation, etc. (11 I. C. C. 129), 32.
 Ches. & Ohio Fuel Co. v. United States (115 Fed. R. 610), 358.
 Chicago, etc., v. Jones (149 Ill. 361), 338.
 Chicago, etc., v. Minnesota (134 U. S. 418), 341.
 Chicago, etc., v. Osborne (52 Fed. R. 912), 60.
 Chicago, etc., v. People (77 I. C. C. 443), 338.
 Chicago, etc., v. Wellman (143 U. S. 339), 341.
 Chicago, etc., Ry. v. Becker (32 Fed. R. 849), 335.
 Chicago, etc., Ry. v. Tompkins (176 U. S. 167), 52.
 Chicago Great Western v. United States (No. D. of Iowa, May 6, 1908), 134.
 Chicago & N. W. Ry. v. Dey (35 Fed. R. 866), 338.
 Chicago, R. I. & P. Ry. v. C. & A. Ry. (3 I. C. C. 450), 50.
 Chin Bak Kau (186 U. S. 193), 365.
 Church v. Minneapolis (14 S. Dak. 443), 48.
 Cincinnati, etc., Ry. Co. v. I. C. C. (162 U. S. 184), 29, 30, 37, 39, 54, 67, 92.
 Cincinnati v. C., N. O. & T. P. Ry. (6 I. C. C. 195), 63.
 Cincinnati v. C., N. O. & T. P. Ry. (7 I. C. C. 180), 40.
 Cincinnati v. I. C. C. (206 U. S. 142), 37, 92.
 Coe v. Errol (116 U. S. 517), 334.
 Col. & N. W. v. United States (157 Fed. R. 321, 342), 131, 132.
 Colo. Fuel & Iron Co. v. So. Pac. Ry. (6 I. C. C. 488), 40, 319.
 Colorado Fuel Co. v. So. Pac. Ry. (101 Fed. R. 779), 40, 319.
 Commercial Club of Duluth v. N. P. Ry. (13 I. C. C. 288), 42.
 Consolidated Forwarding Co. v. So. Pac. Ry. (9 I. C. C. 182), 63.
 Cooley v. Philadelphia (12 How. 299), 334.
 Coomes & McGraw v. C., M. & St. P. Ry. (13 I. C. C. 192), 43.
 Corn Belt Meat Pro. Asso. v. C., B. & Q. Ry. (14 I. C. C. 376), 37, 41.
 Cosmopolitan Shipping Co. v. Hamburg-American, etc. (13 I. C. C. 266), 31, 67, 270.
 Counselman v. Hitchcock (142 U. S. 547), 79.
 Covington v. Sanford (164 U. S. 578), 36.
 Cowan v. Bond (39 Fed. R. 54), 50.
 Cox Bros. v. L. V. Ry. (4 I. C. C. 535), 49.
 Crawford v. N. Y. C. & H. R. Ry. (10 Am. Neg. Rep. 166), 133.
 Crews v. R. & D. Ry. (1 I. C. C. 401), 40.
 Cutting v. Florida, etc., Ry. (46 Fed. R. 641), 69.
 Dallas v. G., C. & S. F. Ry. Co. (12 I. C. C. 223), 40.
 Daniel Ball (77 U. S. 557), 69; (10 Wall. 565) 334.
 Daniels v. C., R. I. & Pac. Ry. (6 I. C. C. 458), 56.
 Dash v. Van Kleeck (7 Johns. 499), 98.
 Davidson v. New Orleans (96 U. S. 97), 335.
 Debs, In re (158 U. S. 564), 358.

References are to pages.

- Demurrage Charges on Private Cars (13 I. C. C. 378), 316.
- Denison Light & Power Co. v. M., K. & T. Ry. (10 I. C. C. 337), 40.
- Detroit, etc., v. I. C. C. (74 Fed. R. 803), 54, 60.
- Detroit, etc., v. I. C. C. (167 U. S. 644), 54.
- Divisions of Joint Rates and Allowances to Terminal Railroads (10 I. C. C. 385), 49.
- Dow v. Beidelman (125 U. S. 680), 335.
- Duncan v. A., T. & S. F. Ry. (6 I. C. C. 85), 40, 63, 81.
- East Tenn., etc., Ry. v. I. C. C. (181 U. S. 1), 52, 55, 60, 61, 62, 91.
- Edmunds v. Ill. Cent. Ry. (80 Fed. R. 78), 70.
- Edwards v. N., C. & St. L. Ry. (12 I. C. C. 247), 50.
- Eichenberg v. So. Pac. Co. (14 I. C. C. 250), 42.
- El Paso So. Ry. v. United States (D. C. Arizona, Jan. 30, 1907), 131.
- England v. B. & O. Ry. (13 I. C. C. 614), 43, 93.
- Enterprise Mfg. Co. v. Ga. Ry. (12 I. C. C. 130, 451), 39, 56.
- Export and Domestic Traffic (8 I. C. C. 214; 10 I. C. C. 55), 30, 56, 67.
- Export Shipping Co. v. Wabash Ry. (14 I. C. C. 437), 49.
- Express Companies (1 I. C. C. 349), 63, 92.
- Farmers', etc., v. N. E. of S. C. Ry. et al. (6 I. C. C. 295), 32, 56.
- Farmers', etc., v. Northern, etc. (83 Fed. R. 267), 00.
- Farmers' Warehouse Co. v. Lou. & Nash. (12 I. C. C. 457), 97.
- Farrar v. So. Ry. (11 I. C. C. 640), 40.
- Field v. So. Ry. (13 I. C. C. 298), 41, 81.
- Fitzgerald v. Fitzgerald (41 Neb. 376), 48.
- Fort Smith, etc., v. St. L. & S. F. Ry. (13 I. C. C. 651), 38.
- Frank Parmalee Co. (12 I. C. C. 39), 32, 270.
- Frye & Bruhn v. No. Pac. (13 I. C. C. 501), 37.
- Gallopy & Firestone v. C., H. & D. (11 I. C. C. 1), 49.
- Gardner & Clark v. So. Ry. (10 I. C. C. 342), 55.
- Gardner v. Early (69 Iowa, 42), 79.
- General Electric Co. v. N. Y. C. & H. R. Ry. (14 I. C. C. 237), 85.
- General Paper Co. v. United States (201 U. S. 117), 79.
- Gentry v. A., T. & S. F. Ry. (13 I. C. C. 171), 67.
- George's Creek Basin Coal Co. v. B. & O. Ry. (14 I. C. C. 127), 58.
- Georgia Banking Co. v. Smith (128 U. S. 181), 99.
- Georgia Peach, etc., v. A. C. L. Ry. (10 I. C. C. 255), 32.
- Georgia Southern & Florida Ry., Re Petition (13 I. C. C. 134), 138.
- Gibbons v. Ogden (9 Wheat. 1), 333, 363.
- Gloucester Ferry v. Penna. (114 U. S. 203), 334, 336.
- Goode Coal Co. v. B. & O. R. R. (10 I. C. C. 226), 56.
- Goodhue v. C. G. W. Ry. (11 I. C. C. 685), 36, 61.
- Grain Shippers, etc., v. Ill. Cent. Ry. (8 I. C. C. 158), 41, 92.
- Granger Cases (Munn v. Illinois, 94 U. S. 113; Ruggles v. Illinois, 108 U. S. 526; Wabash v. Illinois, 118 U. S. 557), 335, 338, 340, 341.
- Graves v. Waite (14 N. Y. 162), 66.
- Great Northern Ry. v. United States (208 U. S. 452), 114, 120.
- Gulf, etc., Ry. v. Hefley (158 U. S. 98), 63, 312.
- Gulf, etc., Ry. v. Miami, etc. (86 Fed. R. 407), 29.
- Gulf, etc., v. Texas (204 U. S. 403), 335.
- Gump v. B. & O. Ry. (14 I. C. C. 105), 38, 62, 68.
- Haddock v. D., L. & W. Ry. (4 I. C. C. 296), 50.
- Hale v. Hinkel (201 U. S. 43), 79, 340.
- Hanley v. Ry. Co. (187 U. S. 617), 29.
- Harp v. Choctaw, etc., Ry. (61 C. C. A. 414), 41.
- Harriman v. I. C. C. (157 Fed. R. 432), 79.
- Hawkins v. L. S. & M. S. (9 I. C. C. 207), 49.
- Heard v. Ga. Ry. (1 I. C. C. 428), 50.
- Hefley v. Ry. Co. (158 U. S. 98), 74.
- Hennepin Paper Co. (12 I. C. C. 536), 42.
- Herrick v. Boquillas (200 U. S. 96), 98.
- Hewins v. N. Y., N. H. & H. Ry. (10 I. C. C. 221), 50.
- Heyman v. So. Ry. (203 U. S. 270), 340.
- Holdzkorn v. M. C. Ry. (9 I. C. C. 42), 56, 61.
- Holmes v. So. Ry. (8 I. C. C. 561), 81.
- Hope Cotton Oil Co. v. Ry. Co. (12 I. C. C. 265), 41.
- Hopkins v. United States (171 U. S. 578), 353, 361.
- Houston, etc., Ry. v. Mayes (201 U. S. 321), 340.

References are to pages.

- Howard v. Ill. Cent. Ry. (207 U. S. 463), 344.
- Howell v. N. Y., L. E. & W. Ry. (2 I. C. C. 272), 39.
- Hughes v. Penna. Ry. (191 U. S. 477), 106.
- Hunter v. Wood (209 U. S. 205), 47.
- Hussey v. C., R. I. & P. Ry. (13 I. C. C. 366), 31, 81, 97.
- Hutchinson Salt Case (10 I. C. C. 1), 49.
- Hutting v. Massachusetts (183 U. S. 553), 365.
- Hydraulic Press Brick Co. v. St. L. & S. F. Ry. Co. (13 I. C. C. 342), 68.
- Illinois Central Ry., Complaint of (12 I. C. C. 7), 32.
- Ill. Cent. Ry. v. I. C. C. (206 U. S. 441), 37, 39, 41, 71, 84, 92.
- Ill., etc., Ry. v. Stone (20 Fed. R. 468), 335.
- Immigrant Case (10 I. C. C. 13), 63.
- Import Rate Case (162 U. S. 197), 30, 61.
- Independent Refiners' Assn. v. N. Y. & P. Ry. (4 I. C. C. 162), 42.
- Independent Refiners' Assn. v. W. N. Y. & P. (5 I. C. C. 415), 56, 63, 92.
- Independent Refiners, etc., v. Western Ry. (6 I. C. C. 378), 92.
- Inman v. S. A. L. Ry. (159 Fed. R. 960), 109.
- Interstate Com. Com. v. A., T. & S. F. Ry. (50 Fed. R. 295), 91.
- v. A., T. & S. F. Ry. (149 U. S. 264), 91.
- v. Alabama (168 U. S. 144, 165), 29, 48, 49, 51, 54, 55, 60, 61, 62.
- v. Alabama, etc. (74 Fed. R. 715), 36, 54.
- v. Baird (194 U. S. 24), 79, 366.
- v. B. & O. Ry. (145 U. S. 263), 41, 48, 49, 54, 91, 335.
- v. B., Z. & C. Ry. (77 Fed. R. 942), 30.
- v. Belleaire, etc. (77 Fed. R. 942), 105.
- v. Brimson (154 U. S. 447), 60, 79, 335, 363, 366, 367.
- v. Chicago, etc. (81 Fed. R. 783), 105.
- v. Chicago, etc. (94 Fed. R. 272), 91.
- v. Chicago, etc. (103 Fed. R. 249), 66.
- v. Chicago, etc. (186 U. S. 320), 66.
- v. Chicago Great Western Ry. (209 U. S. 108), 53.
- Interstate Com. Com. v. Cincinnati (162 U. S. 184), 91, 337.
- v. Cincinnati, etc., Ry. (167 U. S. 479, 511), 36, 40, 79, 339, 341.
- v. Cincinnati, etc., Ry. (56 Fed. R. 937), 60.
- v. Cincinnati, etc. (64 Fed. R. 981), 79, 91.
- v. Cincinnati, etc. (167 U. S. 479), 00.
- v. Cin., etc., Ry. (124 Fed. R. 624), 55.
- v. C., N. O. & T. P. Ry. (76 Fed. R. 183), 79.
- v. C. & O. Ry. (200 U. S. 361), 42.
- v. Detroit, etc., Ry. (167 U. S. 633), 41, 49.
- v. East Tenn., etc., Ry. (85 Fed. R. 107), 29, 36, 60, 91.
- v. Harriman (157 Fed. R. 432), 79.
- v. Ill. Cent. Ry. (206 U. S. 441), 37, 39, 41, 71, 84, 92.
- v. Indianapolis (99 Fed. R. 472), 41.
- v. L. S. & M. S. (197 U. S. 536), 105.
- v. L. V. Ry. (49 Fed. R. 177), 91.
- v. Lehigh Valley Ry. (74 Fed. R. 784), 40.
- v. Louisville, etc. (73 Fed. R. 409), 29, 36, 54, 55, 79.
- v. Lou. & Nash. Ry. (102 Fed. R. 709), 92.
- v. Lou. & Nash. Ry. (118 Fed. R. 613), 92.
- v. Lou. & Nash. Ry. (190 U. S. 273), 55, 56, 61.
- v. Nashville, etc., Ry. (120 Fed. R. 935), 40.
- v. New Haven & Hartford Ry. (200 U. S. 361), 120.
- v. S. P. Ry. (132 Fed. R. 829), 63.
- v. Seaboard Air Line Ry. (82 Fed. R. 563), 105.
- v. So. Pac. Ry. (123 Fed. R. 596), 91, 92.
- v. So. Ry. (105 Fed. R. 703), 36, 54.
- v. So. Ry. (117 Fed. R. 741), 36, 54, 91.
- v. Western, etc. (88 Fed. R. 186), 55, 60.
- v. Western, etc. (93 Fed. R. 83), 48, 54, 55.
- Interstate Stockyard v. Indianapolis, etc. (99 Fed. R. 473), 55.
- In the Matter of Legal Rates, 310.
- Investigation of Grand Trunk Ry. of Canada (3 I. C. C. 89), 69.
- Jackson v. Van Zandt (12 Johns. 169), 98.

References are to pages.

- Jay v. St. Louis (138 U. S. 1), 71.
 Johnson v. So. Pac. Ry. (196 U. S. 1; 117 Fed. R. 462), 131, 132, 134.
 Joint Traffic Assn. Case (171 U. S. 505), 63.
 Jones v. St. L. & S. F. Ry. (12 I. C. C. 144), 42.
 Junod v. Chicago, etc. (47 Fed. R. 290), 70.
 Kansas v. Atchison, etc. (112 U. S. 414), 71.
 Kemble v. B. & O. Ry. (8 I. C. C. 110), 51, 67.
 Ken. & Ind., etc., v. L. & N. Ry. (37 Fed. R. 567), 336.
 Kentucky v. Lou. & Nash. Ry. (37 Fed. R. 567), 69, 79, 91, 92.
 Kilbourn v. Thompson (103 U. S. 168), 366, 367.
 Kindel v. Adams Exp. Co. (13 I. C. C. 475), 37, 309.
 Kinnaney v. Terminal, etc. (81 Fed. R. 802), 72.
 Kiser Co. v. Central of Ga. Ry. (158 Fed. R. 193), 71.
 Knight, E. C., Co. v. United States (156 U. S. 1), 350.
 Koch Secret Service v. Lou. & Nash. Ry. (13 I. C. C. 523), 41.
 Kochler, Ex parte (30 Fed. R. 869), 29.
 L. & N. Ry. v. I. C. C. (99 Ky. 132), 337.
 La Salle, etc., v. Chicago & N. W. Ry. (13 I. C. C. 610), 68, 85, 93.
 Laning-Harris v. M. P. Ry. (13 I. C. C. 154), 68.
 Legal Rates, 310.
 Lehigh Valley v. Rainey (112 Fed. R. 487), 70.
 Lehigh Valley Ry. v. Pennsylvania (145 U. S. 192), 29.
 Lenon, In re (166 U. S. 548), 70.
 Leonard v. K. C. & S. Ry. (13 I. C. C. 573), 29, 30, 32, 105.
 Lincoln Creamery Co. v. U. P. Ry. (5 I. C. C. 156), 40.
 Little Rock, etc., v. St. Louis (63 Fed. R. 775), 58, 59.
 Little Rock, etc., v. St. Louis, etc. (59 Fed. R. 407), 59.
 Liverpool Ins. Co. v. Mass. (10 Wall. 567), 365.
 Loewe v. Lawlor (208 U. S. 274), 357.
 Logan v. Postal Tel. Co. (157 Fed. R. 570), 340.
 Lou. & Nash. v. R. R. Com. of Alabama (157 Fed. R. 944), 71.
 Loud v. S. C., etc., Ry. (5 I. C. C. 529), 40, 49.
 Louisville & Nashville Ry. v. Behlmer (175 U. S. 648), 30, 51, 60, 61, 62, 67, 91, 92.
 Louisville & Nashville Ry. v. Brown (123 Fed. R. 926), 36.
 Louisville v. R. R. Co. (19 Fed. R. 679), 335, 337.
 Louisville v. R. R. Com. (33 L. A. R. 209), 00.
 Loup Creek Colliery Case (12 I. C. C. 471), 67, 84.
 Lundquist v. Grand Trunk, etc. (121 Fed. R. 915), 48.
 Lykes Steamship Line v. Commercial Union et als. (13 I. C. C. 310), 31.
 Macbride Coal, etc., v. C., St. P., M. & D. Ry. (13 I. C. C. 571), 43.
 Macloon v. C. & N. Ry. (5 I. C. C. 84), 97.
 Manning v. C. & A. Ry. (13 I. C. C. 125), 79.
 Manufacturers', etc., v. M. & St. L. Ry. (4 I. C. C. 79), 40.
 Marbury v. Madison (1 Cranch, 137), 366.
 Marshall Oil Co. v. C. & N. W. (14 I. C. C. 210), 41.
 Martin v. C., B. & Q. Ry. (2 I. C. C. 31), 67.
 Masurite, etc., v. P. & L. E. Ry. (13 I. C. C. 405), 41.
 McAlester v. Henkel (201 U. S. 90), 79.
 McDonald v. Hovey (110 U. S. 619), 54.
 McLean v. Denver, etc., Ry. (203 U. S. 38), 340.
 McMillan v. Western Classification, etc. (4 I. C. C. 276), 81.
 McNiel v. So. Ry. Co. (202 U. S. 543), 41, 340.
 McRae Terminal Co. v. So. Ry. (12 I. C. C. 270), 41.
 Merchants' Cotton Press v. Insurance Co. (151 U. S. 368), 48, 50.
 Michigan Salt Case (10 I. C. C. 148), 49, 56.
 Milk Producers v. D., L. & W. Ry. (7 I. C. C. 92), 29.
 Milwaukee v. C., M. & St. P. Ry. (7 I. C. C. 481), 40.
 Milwaukee v. F. & P. M. Ry. (2 I. C. C. 553), 67.
 Minneapolis v. Beckwith (129 U. S. 26), 335.
 Minneapolis v. G. N. Ry. (5 I. C. C. 571), 81.
 Minneapolis v. Minnesota (186 U. S. 357), 37.
 Mississippi v. Illinois Central Ry. (203 U. S. 335), 340.
 Missouri, etc., v. Texas, etc. (31 Fed. R. 862), 81.
 Missouri & Kansas Shippers' Asso. v. A., T. & S. F. Ry. (13 I. C. C. 411), 92, 99.

References are to pages.

- Mobile County v. Kimball (102 U. S. 691), 334.
 Mobile & Ohio Grain Rate Case (9 I. C. C. 373), 50.
 Mobile & Ohio Ry. v. Dismukes (94 Ala. 131), 66.
 Mobile & Ohio Ry. v. Sessions (28 Fed. R. 592), 336.
 Montague v. Lowry (193 U. S. 38), 358.
 Montg. Freight Bureau v. W. of Ala. (14 I. C. C. 150), 38, 67, 84.
 Morrill v. U. Pac. Ry. (6 I. C. C. 121), 40.
 Mottley v. Louisville & Nashville R. R. (150 Fed. R. 407), 32.
 Mulcahy v. Queen, L. R. (3 H. L. 306), 357.
 Munn v. Illinois (94 U. S. 113), 335, 338, 340, 341.
 Murdock v. Franklin Ins. Co. (33 W. Va. 407), 98.
 Murray v. Chicago, etc. (62 Fed. R. 24), 70.
 N. & W. Ry. v. Sims (191 U. S. 441), 361.
 National Petroleum Asso. v. C., M. & St. P. Ry. (14 I. C. C. 284), 91.
 Nelson v. United States (201 U. S. 92), 79.
 New Albany Fur. Co. v. M., J. & K. C. Ry. (13 I. C. C. 594), 37.
 New Orleans Cotton Exchange v. C., N. O. & T. P. Ry. (4 I. C. C. 694), 67.
 New Orleans v. C., N. O. & T. P. Ry. (2 I. C. C. 375), 39.
 New Orleans v. Ill. Cent. Ry. (2 I. C. C. 777), 36.
 New Orleans v. Ill. Cent. Ry. (3 I. C. C. 534), 36, 40.
 New Orleans v. T. P. Ry. (10 I. C. C. 327), 40.
 Newspaper Employees (12 I. C. C. 15), 32.
 New York Board of Trade v. Pa. Ry. (4 I. C. C. 447), 30, 50.
 New York, etc., Ry. v. Bristol (151 U. S. 556), 334, 335.
 New York Hay Exchange Asso. v. Penna. Ry. (14 I. C. C. 178), 43, 49.
 New York, N. H. & H. Ry. v. Platt, Receiver (7 I. C. C. 325), 67.
 New York Produce Exchange v. N. Y. C. & H. R. Ry. (3 I. C. C. 137), 67.
 Nicola, Stone & Myers Co. v. L. & N. Ry. (14 I. C. C. 199), 93, 94, 96, 99.
 Northern Securities Co. v. United States (193 U. S. 197), 357, 358, 363, 365.
 Oklahoma & Ark. Coal Traffic Bureau v. C., R. I. & Pac. Ry. (14 I. C. C. 216), 37.
 Order of Railway Conductors (1 I. C. C. 8), 81.
 Oregon, etc., v. Northern, etc. (51 Fed. R. 475), 42, 58, 59.
 Oregon & Washington Lumber, etc., v. U. P. Ry. (14 I. C. C. 1), 39.
 Osborne v. C. & N. W. Ry. (48 Fed. R. 49; 52 Fed. R. 912), 92, 94.
 Otis v. Ludlow (201 U. S. 147), 79.
 Ottumwa Bridge Co. v. C., M. & St. P. Ry. (14 I. C. C. 121), 96.
 Pacific Coast Lumber, etc., v. No. Pac. Ry. (14 I. C. C. 23, 51), 39.
 Paine v. L. V. Ry. (7 I. C. C. 218), 50.
 Parkhurst v. Penna. Ry. (2 I. C. C. 131), 69.
 Parks v. Cincinnati, etc., Ry. (10 I. C. C. 47), 56.
 Parsons v. C. & N. W. Ry. (167 U. S. 447), 70, 92, 94.
 Party Rate Tickets (12 I. C. C. 95; 145 U. S. 263; 13 I. C. C. 298), 41, 49.
 Patten v. United States (155 U. S. 438), 75.
 Paul v. Virginia (8 Wall. 168), 365.
 Payne-Gardner Co. v. L. & N. Ry. (13 I. C. C. 638), 56.
 Penna. Millers', etc., v. P. & R. Ry. (8 I. C. C. 560), 66.
 Penna. Ry. v. Hughes (191 U. S. 477), 106.
 Penna. Sugar Refining Co. v. American Sugar Refining Co. (160 Fed. R. 144), 352.
 Pensacola, etc., v. State (3 L. R. A. 661), 336.
 Pensacola, etc., v. Western Union, etc. (96 U. S. 9), 334.
 People v. New York, etc., Ry. (104 N. Y. 58), 335.
 Perkins v. No. Pac. Ry. (155 Fed. R. 445), 47, 92.
 Perry v. F., C. & Pa. Ry. (5 I. C. C. 97), 96.
 Peters v. United States (94 Fed. R. 127), 75.
 Phillips, Bailey & Co. v. Lou. & Nash. Ry. (8 I. C. C. 93), 61, 81.
 Phillips, etc., v. So. Pac. Ry. Co. (13 I. C. C. 644), 56, 62.
 Phillips v. G. T. W. Ry. (11 I. C. C. 659), 40.
 Pitcairn Coal Co. v. B. & O. Ry. (154 Fed. R. 108, 497), 56.
 Pittsburg Plate Glass Case (13 I. C. C. 87), 30, 40, 49, 52, 55, 56, 61, 62.
 Platt v. Le Cocq (158 Fed. R. 723), 59.
 Pond-Deck v. Spencer (86 Fed. R. 846), 66.
 Pooling Freights (115 Fed. R. 588), 63, 75.

References are to pages.

- Poor Grain Co. v. Ry. Co. (12 I. C. C. 418), 68.
- Potlatch Lumber Co. v. S. F. & N. Ry. (157 Fed. R. 588), 47, 71, 92.
- Potter Mfg. Co. v. C. & G. T. Ry. (5 I. C. C. 514), 40.
- Power of Train Brakes (11 I. C. C. 429), 131.
- Powhatan Coal Co. v. N. & W. Ry. (13 I. C. C. 69), 56.
- Pratt Lumber Co. v. C., I. & L. Ry. (10 I. C. C. 29), 55.
- Preston & Davis v. D., L. & W. Ry. (12 I. C. C. 114), 42.
- Procedure in Cases at Issue (1 I. C. C. 223), 81.
- Proctor & Gamble v. C., H. & D. (4 I. C. C. 87), 49.
- Proctor & Gamble v. C., H. & D. (9 I. C. C. 440), 49.
- Producers' Pipe Line v. St. Louis, etc., Ry. (12 I. C. C. 186), 81.
- Proposed Advance of Freight Rates (9 I. C. C. 382), 40, 41.
- Providence Coal Co. v. P. & W. Ry. (1 I. C. C. 107), 49.
- Publication & Filing of Tariffs, etc. (10 I. C. C. 55), 30, 67.
- Pueblo Trans. Asso. v. So. Pac. Co. (14 I. C. C. 82), 67, 93, 95.
- Quimby v. Maine Central Ry. (13 I. C. C. 246), 50, 56, 67.
- Railway Valley Ry. v. D., L. & W. Ry. (14 I. C. C. 191), 41.
- Rail & River Coal Co. v. B. & O. Ry. (14 I. C. C. 86), 56, 58.
- Railroad Com. v. Clyde Steamship Co. (5 I. C. C. 391), 67.
- Railroad Com. of Kansas v. A., T. & S. F. Ry. (8 I. C. C. 304), 56.
- Railroad Com. of Ohio v. Hocking Valley Ry. (12 I. C. C. 398), 56.
- Railroad Com. v. Oregon (17 Ore. 65), 335.
- Railroad Commission Cases (116 U. S. 336), 341.
- Railroad-Telegraph Companies (12 I. C. C. 10), 32.
- Railroad v. Mississippi (102 U. S. 135), 71.
- Randolph Lumber Co. v. S. A. L. Ry. (14 I. C. C. 338; 13 I. C. C. 601), 61, 67.
- Ratican v. Terminal Asso. (114 Fed. R. 666), 92, 94.
- Raymond v. C., M. & St. P. Ry. (1 I. C. C. 230), 51.
- Re Legal Rates, 310.
- Reagan v. Farmers, etc. (154 U. S. 362), 39, 335, 341.
- Red Cloud Mining Co. v. So. Pac. Ry. (9 I. C. C. 216), 66.
- Red Rock Fuel Co. v. B. & O. R. R. (11 I. C. C. 438), 41.
- Refiners v. W. N. Y. & Pa. Ry. (6 I. C. C. 378), 56, 63, 92.
- Refrigeration of Fruit, etc. (10 I. C. C. 360), 32.
- Released Rates, In re (13 I. C. C. 550), 109.
- Rhineland Paper Co. v. No. Pac. Ry. (13 I. C. C. 633), 38, 56.
- Rice v. C., W. & B. Ry. (3 I. C. C. 186), 79.
- Rice v. Georgia Ry. (14 I. C. C. 75), 59.
- Rice v. L. & N. Ry. (3 I. C. C. 162), 41.
- Rice v. W. N. Y. & Pa. Ry. (4 I. C. C. 131), 49.
- Robbins v. Shelby County, etc. (120 U. S. 489), 336.
- Royal Coal & Coke Co. v. So. Ry. (13 I. C. C. 440), 56.
- Ruggles v. Illinois (108 U. S. 526), 335.
- Ruttle v. Pere Marquette Ry. (13 I. C. C. 179), 50, 55.
- Savannah v. C. S. Ry. (7 I. C. C. 601), 41.
- Schlemmer v. Buffalo, etc., Ry. Co. (205 U. S. 1), 133.
- Seaboard Air Line Ry. v. R. R. Com. of Alabama (155 Fed. R. 792), 37.
- Seaboard Air Line v. Seegers (207 U. S. 73), 110.
- Shamberg v. D., L. & W. Ry. (4 I. C. C. 630), 49.
- Sheldon v. Wabash, etc., Ry. (105 Fed. R. 785), 70.
- Shiel & Co. v. Ill. Cent. Ry. (12 I. C. C. 210), 39, 50, 68.
- Shinkle v. L. & N. Ry. (62 Fed. R. 690), 91.
- Sidman v. R. & D. Ry. (3 I. C. C. 512), 50.
- Smeltzer v. St. L. & S. F. Ry. (158 Fed. R. 649), 106.
- Smith v. Ames (169 U. S. 546), 36, 341.
- Smyth v. Ames (169 U. S. 466), 341.
- So. Pac. v. Colorado Fuel Co. (101 Fed. R. 779), 91.
- So. Pac. v. I. C. C. (200 U. S. 536), 50.
- So. Pac. Co., In re (155 Fed. R. 1001), 148.
- Social Circle Case (162 U. S. 184), 60, 67.
- Solvay Process Co. v. D., L. & W. Ry. (14 I. C. C. 246), 85.
- Sorrel v. Central Ry. (75 Ga. 509), 338.
- Sou. Ry. v. Tift (206 U. S. 428), 71, 93.
- Southern Pac. Co. v. I. C. C. (200 U. S. 536), 63.

References are to pages.

- Southern Pine Lumber Co. v. So. Ry. (14 I. C. C. 195), 92, 95.
 Southern Ry. v. McNeill (155 Fed. R. 756), 47.
 Southwestern, etc., v. McBride (185 U. S. 499), 98.
 St. L. & Pac. Ry. v. Ill. (118 U. S. 557), 341.
 St. L., I. M. & So. Ry. v. Taylor (210 U. S. 281), 131, 133.
 St. Louis v. A., T. & S. F. Ry. (9 I. C. C. 318), 49.
 St. Louis, etc., v. Gill (156 U. S. 649), 341.
 St. Louis v. L. & N. Ry. (65 Fed. R. 39), 59.
 St. Louis & S. F. Ry. (8 I. C. C. 301), 67.
 Standard Oil Co. v. United States (155 Fed. R. 305), 92.
 Starin v. New York (115 U. S. 248), 71.
 State, etc., v. Chicago, etc., Ry. (38 Minn. 281), 335.
 State, etc., v. Fremont, etc., Ry. (22 Neb. 313), 335.
 State v. New Haven, etc., Ry. (37 Conn. 153), 335.
 Stedman v. C. & N. Ry. (13 I. C. C. 167), 67.
 Stone v. Farmers (116 U. S. 307), 335, 338, 341.
 Stone v. Natchez, etc., Ry. (62 Miss. 646), 00.
 Stoutenberg v. Hennick (129 U. S. 141), 336.
 Stowe-Fuller Co. v. Pa. Co. (12 I. C. C. 215), 56.
 Suffern, Hunt & Co. v. I., D. & W. Ry. (7 I. C. C. 255), 97.
 Suspension of Fourth Section (7 I. C. C. 593), 61.
 Swift v. Philadelphia (64 Fed. R. 59), 72.
 Swift v. United States (111 U. S. 28), 95.
 Swift v. United States (196 U. S. 395), 357.
 Taylor v. St. L., I. M. & So. Ry. (210 U. S. 281), 133.
 Tayntor Granite Co. v. Montpelier, etc. (14 I. C. C. 136), 37.
 Tecumseh Celery Co. v. C., J. & M. Ry. (5 I. C. C. 663), 81.
 Tennessee v. Davis (100 U. S. 257), 71.
 Tex. & Pac. v. Mugg (202 U. S. 242), 312.
 Texas, etc., v. Cisco, etc. (204 U. S. 449), 67.
 Texas & Pac. Ry. v. Abilene Cotton Oil Co. (204 U. S. 426), 37, 71, 93, 112, 312.
 Texas & Pacific Ry. v. I. C. C. (162 U. S. 197), 29, 36, 51, 52, 54, 55, 60, 61, 62, 79.
 Thatcher v. D. & H. Co. (1 I. C. C. 152), 51.
 Through Routes and Joint Rates (12 I. C. C. 163), 67, 68.
 Thurber v. N. Y. C. & H. R. Ry. (3 I. C. C. 473), 39, 49.
 Tift v. So. Ry. (123 Fed. R. 730, 138 Fed. R. 735, 206 U. S. 428), 40, 63, 94.
 Tifton v. L. & N. Ry. (9 I. C. C. 160), 41.
 Toledo, etc., Ry. v. Penna., etc., Ry. (54 Fed. R. 746), 71, 75.
 Topeka Banana Dealers', etc., v. St. L. & S. F. Ry. (13 I. C. C. 620), 38.
 Tozer v. United States (52 Fed. R. 917), 338.
 Traer, Receiver, v. C. & A. Ry. (13 I. C. C. 451), 56.
 Train Brakes, Power of (11 I. C. C. 429), 131.
 Transportation of Grain (7 I. C. C. 240), 50.
 Transportation of Cotton (8 I. C. C. 121), 50.
 Uckisson v. Davenport (83 Mich. 211), 98.
 Union Bridge Co. v. United States (204 U. S. 364), 000.
 Union Pac. Ry. v. Goodridge (149 U. S. 680), 337.
 Union Pac. Ry. v. United States (117 U. S. 355), 52.
 United States v. Addyston Pipe, etc. (175 U. S. 211), 365.
 v. American Sugar Ref. Co. (202 U. S. 577), 98.
 v. Anderson (171 U. S. 604), 355.
 v. Armour & Co. (142 Fed. R. 808), 79, 366, 367.
 v. Armour & Co. (209 U. S. 56), 30, 68, 120.
 v. Atlantic Coast Line (153 Fed. R. 918), 131.
 v. B. & O. Ry. (153 Fed. R. 997), 41, 75.
 v. Benson (70 Fed. R. 591), 75.
 v. Belt Ry. of Chicago (No. Dist. of Ill., Jan. 23, 1908), 135.
 v. C., B. & Q. Ry. (156 Fed. R. 180), 134.
 v. C., M. & St. P. Ry. (149 Fed. R. 486), 133, 134.
 v. C. & N. W. Ry. (157 Fed. R. 616), 132.
 v. C., P. & St. L. (143 Fed. R. 353), 131, 132.

References are to pages.

- United States v. Camden Iron Works (158 Fed. R. 561), 120.
 v. Cent. Ver. (157 Fed. R. 291), 120.
 v. Central of Ga. Ry. (157 Fed. R. 893), 134, 135.
 v. Chicago Great Western (D. C. for No. Dist. Iowa, May 6, 1908), 134.
 v. Chicago & Litchfield (11 I. C. C. 698), 000.
 v. Col. & N. W. (157 Fed. R. 321, 342), 131, 132.
 v. Colorado & N. W. Ry. (157 Fed. R. 321), 131.
 v. Coombs (12 Pet. 79), 333.
 v. Cruikshank (92 U. S. 542), 75.
 v. D., L. & W. Ry. (152 Fed. R. 270), 114, 120.
 v. Debs (64 Fed. R. 723), 36.
 v. Delaware, etc., Ry. (40 Fed. R. 101), 48, 55, 113.
 v. Downing (76 C. C. A. 381), 114, 120.
 v. E. C. Knight Co. (156 U. S. 1), 350, 361.
 v. El Paso So. Ry. (Second Dist. of Arizona, Jan. 30, 1907), 131.
 v. General Paper Co. (201 U. S. 117), 79.
 v. Great No. Ry. (145 Fed. R. 438), 132.
 v. Great Northern Ry. (150 Fed. R. 229), 134.
 v. Great Northern Ry. (208 U. S. 452; 157 Fed. R. 288), 120.
 v. Hanley (71 Fed. R. 673), 48.
 v. Heth (3 Cranch, 399), 98.
 v. Hopkins (171 U. S. 578), 353.
 v. I. H. Ry. (157 Fed. R. 565), 00.
 v. Ill. Cent. Ry. (156 Fed. R. 182), 132.
 v. Joint Traffic, etc. (171 U. S. 505), 352, 357.
 v. L. & N. Ry. (156 Fed. R. 193, 195), 134.
 v. Mo. Pac. Ry. (85 Fed. R. 903), 91.
 v. Morris (40 Fed. R. 101), 58.
 v. Morseman (42 Fed. R. 448), 29.
 v. N. Y. C. & H. R. Ry. (157 Fed. R. 293), 120.
 v. Nelson (201 U. S. 92), 79.
 v. New York Central, etc. (153 Fed. R. 630), 68, 114, 120.
 v. New York Central Ry. (146 Fed. 298), 120.
 v. No. Pac. Term. Co. of Oregon (144 Fed. R. 861), 131.
- United States v. Norfolk (109 Fed. R. 831), 54, 55, 113.
 v. Norfolk, etc. (114 Fed. R. 682), 113.
 v. Northern Securities Co. (193 U. S. 197), 357, 358, 363, 365.
 v. P. & R. Ry. (160 Fed. R. 696), 133, 134.
 v. Peters (94 Fed. R. 127), 75.
 v. Pittsburg, etc. (11 I. C. C. 696), 00.
 v. Ry. Co. (81 Fed. R. 783), 30.
 v. Seaboard (82 Fed. R. 563), 30.
 v. Simmons (96 U. S. 360), 75.
 v. So. Ry. (135 Fed. R. 122), 132, 134.
 v. Standard Oil Co. (155 Fed. R. 305), 120.
 v. St. L., I. M. & So. Ry. (D. C. for W. D. Tenn., June 11, 1907), 133.
 v. Swift & Co. (196 U. S. 375), 357.
 v. Texas, etc. (162 U. S. 1), 92.
 v. Tozer (39 Fed. R. 369), 48, 49.
 v. Trans-Mo. Freight Assn. (166 U. S. 290), 63, 352, 357.
 v. Union Pacific Ry. (104 U. S. 662), 36.
 v. Union Pacific Ry. (117 U. S. 355), 52.
 v. Union Stock Yards of Omaha (Dist. of Neb., Feb. 21, 1908), 133, 132.
 v. Vacuum Oil Co. (158 Fed. R. 536), 120.
 v. Wabash, 133.
 v. West Va. N. Ry. (125 Fed. R. 253), 56.
 v. Wheeling & L. E. Ry. (No. Dist. of Ohio, June 16, 1908), 133, 134.
 v. Williams (159 Fed. R. 310), 36.
 v. Workmen's Amalgamated Council (26 L. R. A. 158), 358.
- United States Fidelity, etc., v. Struthers, Wells & Co. (209 U. S. 537), 98.
 Vacuum Oil Co. v. United States (158 Fed. R. 536), 120.
 Van Patten v. Chicago, etc. (74 Fed. R. 981), 70.
 Van Patten v. Chicago, etc. (81 Fed. R. 547), 29.
 Veazie v. Moore (12 How. 574), 333.
 Victor Fuel Co. v. A., T. & S. F. (14 I. C. C. 119), 85.
 Voelker v. C., M. & St. P. (129 Fed. R. 522; 116 Fed. R. 867), 134.
 Wabash, etc., v. Illinois (118 U. S. 557), 340.

References are to pages.

- | | |
|--|---|
| <p>Walker v. B. & O. Ry. (12 I. C. C. 196), 50.</p> <p>Ward v. Mo. Pac. Ry. (158 Mo. 226), 66.</p> <p>Warren Mfg. Co. v. So. Ry. (12 I. C. C. 381), 39, 63.</p> <p>Waxelbaum v. A. C. L. (12 I. C. C. 178), 32, 41, 42.</p> <p>Welton v. Missouri (91 U. S. 280), 333.</p> <p>West Va., etc., v. United States (125 Fed. R. 252), 56.</p> <p>West Va., etc., v. United States (134 Fed. R. 198), 56.</p> <p>Western, etc., v. Penna., etc. (137 Fed. R. 343), 92.</p> <p>Western Oregon Lumber, etc., v. So. Pac. Ry. (14 I. C. C. 69), 37, 40.</p> <p>Wholesale Fruit, etc., v. A., T. & S. F. Ry. (14 I. C. C. 410), 42.</p> | <p>Wichita v. A., T. & S. F. Ry. (9 I. C. C. 534), 56, 61.</p> <p>Wichita v. U. P. Ry. (10 I. C. C. 35), 56.</p> <p>Wight v. United States (167 U. S. 512), 48, 53.</p> <p>Wilson Produce Co. v. Penna. Ry. (14 I. C. C. 170), 43, 49, 58.</p> <p>Winchester, etc., v. Croxton (33 L. R. A. 177), 337.</p> <p>Winkler v. Phila. & Read. Ry. (53 Atl. Rep. 90), 131.</p> <p>Wrigley v. C., C. & St. L. (10 I. C. C. 412), 50.</p> <p>Wyman, etc., v. Boston & Maine (13 I. C. C. 258), 42.</p> <p>Young, Ex parte, Minnesota Rate Case (209 U. S. 123), 47, 120.</p> |
|--|---|

THE LAW
RELATING TO
THE INTERSTATE COMMERCE COMMISSION

CHAPTER I

AN ANALYSIS OF THE ACT TO REGULATE COMMERCE

Art. I. Structure and Organization

- Sec. A. Title of Act**
- Sec. B. Purposes of Act**
- Sec. C. To Whom the Act Applies**
- Sec. D. Scope of Act**
- Sec. E. In Whom Powers Vested**
- Sec. F. Qualifications of Commissioners**
- Sec. G. Term of Office**
- Sec. H. Salary of Commissioners**
- Sec. I. Vacancies**
- Sec. J. Removal**

Art. II. Powers Delegated to the Commission

- Sec. A. Internal Powers**
- Sec. B. External Powers**

Art. III. Duties of Common Carriers

- Sec. A. Penalty for Failure to Perform**
- Sec. B. Enforcement of Penalty**

Art. IV. Limitations Upon Common Carriers

- Sec. A. Penalty for Violation**
- Sec. B. Enforcement of Penalty**

Art. V. Procedure Before the Commission

- Sec. A. Petition**
- Sec. B. Notice**
- Sec. C. Evidence**
- Sec. D. Decision, Order or Requirement**
- Sec. E. Modification of Orders**
- Sec. F. Supplemental Orders**

Sec. G. Enforcement of Orders

- (1) Order to Pay Money
- (2) Order Other Than to Pay Money

Sec. H. Rehearing**Sec. I. Special Counsel****Art. VI. Civil Procedure in the Courts in Aid of the Decisions, Orders and Requirements of the Interstate Commerce Commission****Sec. A. Commencement of Proceedings****Sec. B. Venue of Suits****Sec. C. Service of Process or Notice****Sec. D. Enforcement of Order to Pay Money****Sec. E. Enforcement of Order Other Than to Pay Money****Sec. F. Compulsory Process****Sec. G. Mandamus****Sec. H. Suits for Recovery of Forfeitures****Sec. I. Appeal****Sec. J. Precedence of Cases****Art. VII. Elkins Act. Section 3****Civil Procedure in the Courts by the Interstate Commerce Commission Against Carriers for Departure From Published Rates or Unlawful Discrimination****Sec. A. Petition****Sec. B. Venue****Sec. C. Notice****Sec. D. Parties****Sec. E. Hearing****Sec. F. Enforcement****Sec. G. Compulsory Process****Sec. H. Appeal****Art. VIII. Miscellaneous Provisions****Sec. A. Examiner Divulging Facts****Sec. B. Immunity Provisions****Sec. C. Interchange of Traffic****Sec. D. Interpretation Clauses****Sec. E. Liability of Carrier****Sec. F. Limitation of Proceedings****Sec. G. Notices****Sec. H. Reparation****Sec. I. State Railroad Commissions****Sec. J. Witness Fees**

ART. I. STRUCTURE AND ORGANIZATION**Sec. A. Title of Act**

The Act to Regulate Commerce.

Sec. B. Purposes of Act

1. To prescribe the duties and impose limitations upon certain common carriers.
2. To create the Interstate Commerce Commission, and impose upon it the duty, and invest it with power to execute and enforce the provisions of the Act.

Sec. C. To Whom the Act Applies

1. Carriers of oil or other commodity by pipe lines, except water or gas.
2. Carriers of oil or other commodity partly by pipe lines and partly by railroad.
3. Carriers of oil or other commodity partly by pipe lines and partly by water.
4. Carriers of passengers or property wholly by railroad.
5. Carriers of passengers or property partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment.
6. Carriers of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country.
7. Express companies.
8. Sleeping car companies.

Sec. D. Scope of Act, or Field of Operations of Carriers

1. Pipe lines (no territory specified).
2. Partly by pipe lines and partly by railroads (no territory specified).
3. Partly by pipe lines and partly by water (no territory specified).
4. Railroads,
 - (a) United States.
 - (b) From United States to an adjacent foreign country.
 - (c) From United States through a foreign country to any other place in United States.
5. Partly by railroad and partly by water when both are used under a common control, management or arrangement for a continuous carriage or shipment.
 - (a) United States.
 - (b) From United States to an adjacent foreign country.
 - (c) From United States through a foreign country to any other place in United States.
6. Carriers in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country.
 - (a) United States.

7. Express companies (no territory specified).
8. Sleeping car companies (no territory specified).

Sec. E. In Whom Powers Vested

1. Commission consisting of seven members.
2. A majority of the Commission shall constitute a quorum for the transaction of business.
3. Either member of the Commission may administer oaths and affirmations and sign subpoenas.
4. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.
5. One or more of the Commissioners may prosecute any inquiry necessary to its duties in any part of the United States into any matter or question of fact pertaining to the business of any common carrier.
6. Special agents or examiners employed by the Commission have power to administer oaths, examine witnesses and receive evidence.

Sec. F. Qualifications of Commissioners

1. Appointed by President by and with the advice and consent of the Senate.
2. Not more than four shall be appointed from the same political party.
3. Shall not be in the employ of, or holding any official relation to a carrier, or own stock or bonds thereof, or in any manner pecuniarily interested therein.
4. Shall not engage in any other business, vocation or employment.
5. Shall not participate in any hearing or proceeding in which he has any pecuniary interest.

Sec. G. Term of Office

1. Seven years.

Sec. H. Salary

1. \$10,000 annually to each member.
2. Payable in the same manner as judges of the courts of the United States.

Sec. I. Vacancies

1. New appointment for unexpired time of Commissioner whom he shall succeed.
2. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

Sec. J. Removal

1. May be removed by the President for
 - (1) Inefficiency.
 - (2) Neglect of duty.
 - (3) Malfeasance in office.

Art. II. POWERS DELEGATED TO THE COMMISSION**Sec. A. Internal Powers or Those Which Relate to the Organization and Government of the Commission**

1. To conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.
2. To make, or amend general rules or orders for the regulation of its business, including forms of notice and service thereof.
3. To hear any party in person or by attorney.
4. To record every vote and official act.
5. To have public proceedings upon request.
6. To have a seal.
7. Any member may administer oaths and sign subpoenas. Sec. 17.
8. To appoint a secretary.
9. To employ and fix compensation of other employees.
10. To hire offices and procure supplies.
11. To present itemized vouchers for expenses in making investigations or upon official business elsewhere than Washington. Sec. 18.
12. To hold its general sessions in Washington.
13. To hold special sessions in any part of United States by one or more of the Commissioners. Sec. 19.
14. To make annual reports to Congress. Sec. 21.

Sec. B. External Powers or Those Which Relate to the Duties and Liabilities of Common Carriers

1. To hear and investigate the complaints for failure to make switch connections, and determine as to the
 - (a) Safety,
 - (b) Practicability,
 - (c) Justification, and
 - (d) Compensation therefor.
2. To make an order of compliance. Sec. 1.
3. To modify long and short haul provision. Sec. 4.
4. To allow changes in schedules upon less than thirty days' notice.
5. To modify requirements as to publishing, posting and filing of tariffs.
6. To require evidence of concurrence or acceptance of joint tariffs to be filed.
7. To determine and prescribe the form of schedules. Sec. 6.
8. To hear complaints of persons claiming to be damaged by any carrier. Sec. 9.
9. To inquire into the management of the business of all common carriers subject to this Act.
10. To keep itself informed as to the manner and method in which the same is conducted.
11. To obtain from carriers full and complete information necessary to enable the Commission to perform its duties.
12. To execute and enforce the provisions of this Act and
13. To invoke the United States courts and attorneys in aid of the enforcement thereof.
14. To require the attendance and testimony of witnesses and the production of papers from any place in the United States at any designated place of hearing and may invoke aid of court therefor.

15. To take depositions. Sec. 12.
16. To receive complaints and forward same to carrier and call for answer or reparation.
17. To investigate matters complained of.
18. May institute any inquiry on its own motion. Sec. 13.
19. To make a report in writing, stating,
 - (a) Conclusions,
 - (b) Its decision, order or requirement,
 - (c) Findings of fact on which award is made, in every investigation.
20. To provide for the publication of its reports and decisions.
21. To print its annual reports for distribution. Sec. 14.
22. To determine and prescribe what will be the just and reasonable maximum rate to be thereafter observed.
23. What regulation or practice is just, fair and reasonable to be thereafter followed.
24. To make an order that the carrier shall cease and desist from such violation and shall conform to the regulation or practice so prescribed.
25. To suspend, modify or set aside its orders.
26. To apportion joint rates.
27. To establish through routes and joint rates.
28. To hear and determine what is a reasonable charge to be paid by carrier to owner for service rendered or instrumentality furnished in connection with the transportation. Sec. 15.
29. To make an order for the payment of money
30. To suspend or modify its orders.
31. To employ special counsel. Sec. 16.
32. To grant rehearings after a decision, order or requirement.
33. To make special orders to stay or postpone enforcement.
34. To reverse, change or modify original order. Sec. 16a.
35. To prosecute inquiries in any part of the United States by one or more of the Commissioners. Sec. 19.
36. To require annual reports from carriers and owners of railroads.
37. To prescribe the form of reports and specific answers.
38. To prescribe a period of time in which all carriers shall have a uniform system of accounts and the manner in which such accounts shall be kept.
39. To grant additional time to file reports.
40. To require monthly reports of earnings and expenses and special reports. Sec. 20.
41. To prescribe forms of accounts, records, memoranda, receipts and expenditures of money.
42. To have access to all accounts, records and memoranda kept by carriers.
43. To authorize special agents to examine all accounts, records and memoranda kept by carriers.
44. To have writ of mandamus.
45. To employ special agents or examiners. Sec. 20.
46. To present petition to Circuit Court alleging that carrier is engaged in carriage of passengers or property between given points at less than published rates on file or is committing some discrimination forbidden by law. Elkins Act, Sec. 3.
47. To request Attorney-General to direct District Attorneys to institute and prosecute proceedings. Elkins Act, Sec. 3.

ART. III. DUTIES OF COMMON CARRIERS

Sec. A. Penalty for Failure to Perform

Sec. B. Enforcement of Penalty

DUTIES	PENALTY	ENFORCEMENT
(1) To furnish transportation upon request.	Damage to party injured. Sec. 8. Misdemeanor. Fine \$5,000. Sec. 10.	By suit in any District or Circuit Court on his own behalf or make complaint to Commission and have it hear and give judgment, which judgment is enforceable in Circuit Court. Secs. 9, 13, 16. Criminal prosecution in District Court. Sec. 10.
(2) To establish through routes and		
(3) Just and reasonable rates applicable thereto.		
(4) To make just and reasonable charges for any service rendered or to be rendered in the transportation of passengers or property or in connection therewith.		
(5) To make switch connections and furnish cars. Sec. 1.	Same as above.	Same as above.
(6) To afford equal facilities for interchange of traffic. Sec. 3.	Same as above.	Same as above.
(7) To file schedules with the Commission.	Same as above. See also Elkins Act. Sec. 1.	Same as above. See also Elkins Act. Sec. 1.
(8) To print schedules and keep them open to public inspection. Sec. 6.	Same as above.	Same as above.
(9) To print new schedules when change is made or plainly indicate on old schedule. Sec. 6.	Damage to party injured. Misdemeanor. Fine \$5,000. Sec. 10.	Same as above.
(10) Joint tariffs must specify names of carriers.	Same as above.	Same as above.
(11) To file evidence of concurrence. Sec. 6.		
(12) To file all contracts, agreements or arrangements in relation to traffic. Sec. 6.	Damage to party injured. Sec. 8. Misdemeanor. Fine \$5,000. Sec. 10.	By suit in any District or Circuit Court on his own behalf or make complaint to Commission and have it hear and give judgment which judgment is enforceable in Circuit Court. Secs. 9, 13, 16. Criminal prosecution in District Court. Sec. 10.

DUTIES	PENALTY	ENFORCEMENT
(13) To give preference and precedence to troops and material in time of war.	Same as above.	Same as above.
(14) To facilitate and expedite the military traffic. Sec. 6.	(Order to pay money.)	Same as above.
(15) To observe and comply with orders of the Commission while in effect. Sec. 16.		
(16) To obey orders made under provisions of Sec. 15 (to fix a rate). Sec. 16.	Forfeit to United States \$5,000 for each offense. Sec. 16.	Recoverable in civil suit in name of United States in district where carrier has its principal operating office or in any district through which the road of the carrier runs. Suits prosecuted by District Attorneys. Sec. 16.
(17) To obey orders of Commission other than to pay money. Sec. 16.	Forfeit \$100 for each day in default. Sec. 20.	Party injured or Commission may apply to Circuit Court of the district where carrier has its principal operating office or in which the violation or disobedience shall happen for injunction or mandamus. Sec. 16.
(18) To make annual reports.		Recoverable in civil suit in name of United States in district where carrier has its principal operating office or in any district through which the road runs. Suits prosecuted by District Attorneys. Secs. 16, 20.
(19) To make monthly reports.		
(20) To make special reports. Sec. 20.		
(21) To keep accounts, records and memoranda of the movement of traffic according to form prescribed by Commission.	Forfeit to United States \$500 for each offense. Sec. 20.	Same as above.
(22) To keep record of receipts and expenditures. Sec. 20.		

DUTIES	PENALTY	ENFORCEMENT
(23) To give Commission access to accounts, records and memoranda. Sec. 20.	Forfeit to United States \$500 for each offense.	Same as above.
(24) To comply with all the provisions of the Act. Sec. 20.	Whether liable to penalties imposed by Secs. 8 and 10 (?).	Circuit and District Courts, at request of Commission, by mandamus. Sec. 20. Whether Secs. 9, 10, 13, 16, 20 apply (?).
(25) To issue receipt or bill of lading, and	Misdemeanor. Fine \$5,000; imprisonment in penitentiary for 2 years. Sec. 22.	Any courts of United States of competent jurisdiction in district where offense was committed. Sec. 22.
(26) to become liable to lawful holder for any loss or damage. Sec. 20.		
(27) To file with Commission tariff on which joint interchangeable mileage tickets are based, also amount of free baggage carried with such tickets. Sec. 22.		

ART. IV. LIMITATIONS UPON COMMON CARRIERS

Sec. A. Penalty for Violation

Sec. B. Enforcement of Penalty

PROHIBITIONS	PENALTY	ENFORCEMENT
(1) Unjust and unreasonable charges for transportation of passengers and property. Sec. 1.	Damages to party injured. Sec. 8. Misdemeanor. Fine \$5,000. Sec. 10.	By suit in any District or Circuit Court on his own behalf or make complaint to Commission and have it hear and give judgment, which judgment is enforceable in Circuit Court of United States. Secs. 9, 13, 16. Criminal prosecution in District Court. Sec. 10.
(2) Free transportation for passengers after January 1, 1907. Sec. 1.	Misdemeanor. Fine not less than \$100 nor more than \$2,000, recoverable from both carrier and passengers. Sec. 1.	In any United States court having jurisdiction of carriers in district where crime was committed or through which transportation may have been conducted. Elkins Law. Sec. 1.
(3) Railroad companies cannot transport articles manufactured, mined or produced by it or which it may own or have an interest in, except timber. Sec. 1.	Damages to party injured. Sec. 8. Misdemeanor. Fine \$5,000. Sec. 10.	By suit in any District or Circuit Court on his own behalf or make complaint to Commission and have it hear and give judgment, which judgment is enforceable in Circuit Court of United States. Secs. 9, 13, 16. Criminal prosecution in District Court. Sec. 10.
(4) Special rates, rebates, drawbacks or other device or different charges for like service or unjust discrimination. Sec. 2.	Damages to party injured. Sec. 8. Misdemeanor. Fine \$5,000. Sec. 10. Imprisonment in penitentiary not to exceed 2 years. Sec. 10. See also Elkins Act. Sec. 1.	Same as above. See also Elkins Act. Sec. 1.
(5) Undue or unreasonable preference or advantage. Undue or unreasonable prejudice or disadvantage. Sec. 3.	Damages to party injured. Sec. 8. Misdemeanor. Fine \$5,000. Sec. 10.	By suit in any District or Circuit Court on his own behalf or make complaint to Commission and have it hear and give

PROHIBITIONS	PENALTY	ENFORCEMENT
		judgment, which judgment is enforceable in Circuit Court of United States. Secs. 9, 13, 16. Criminal prosecution in District Court. Sec. 10.
(6) Discriminating in rates between connecting lines. Sec. 3.	Same as above.	Same as above.
(7) Excessive charge for the short haul. Sec. 4.	Damages to party injured. Sec. 8. Misdemeanor. Fine \$5,000. Sec. 10.	Same as above.
(8) Contracts, agreements or combinations for pooling freights of different and competing railroads.	Same as above.	Same as above.
(9) Division of earnings. Sec. 5.		
(10) No changes shall be made in rates except after 30 days' notice to the Commission and to the public. Sec. 6.	Same as above.	Same as above.
(11) To transport passengers and property unless schedules filed and published.	Same as above.	Same as above.
(12) To depart from published rates.	Same as above. Sec. 1.	Same as above. See also Elkins Act. Sec. 1.
(13) To refund or remit, by any device, any rates or charges.		
(14) To extend privileges or facilities other than those specified in tariffs. Sec. 6. See Elkins Law. Sec. 1.		
(15) To combine to prevent continuous carriage by change of schedule time or other device. Sec. 7.	Damages to party injured. Sec. 8. Misdemeanor. Fine \$5,000. Sec. 10.	By suit in any District or Circuit Court on his own behalf or make complaint to Commission and have it hear and give judgment, which judgment is enforceable in Circuit Court of United States. Secs. 9, 13, 16.

PROHIBITIONS	PENALTY	ENFORCEMENT
(16) To violate provisions of this Act. Sec. 8.	Damages to party injured. Sec. 8.	Criminal prosecution in District Court. Sec. 10. By suit in any District or Circuit Court on his own behalf or make complaint to Commission and have it hear and give judgment, which judgment is enforceable in Circuit Court of United States. Secs. 9, 13, 16.
(17) To violate provisions of this Act. Sec. 10.	Misdemeanor. Fine not exceeding \$5,000. Sec. 10.	District Court of United States where offense was committed. Sec. 10.
(18) Unlawful discrimination. Sec. 10.	Fine not exceeding \$5,000. Imprisonment in penitentiary not exceeding 2 years. Sec. 10.	Same as above.
(19) False billing.	Misdemeanor. Fine \$5,000. Imprisonment in penitentiary for 2 years. Sec. 10.	Any court of United States of competent jurisdiction in district where offense was committed. See Elkins Act. Sec. 1.
(20) False classification.		
(21) False weighing.		
(22) False report of weight.		
(23) Any other device or means to obtain transportation for property at less than regular rates. Sec. 10.		
<i>(By others than common carriers.)</i>		
1. False billing.	Misdemeanor. Fine \$5,000. Imprisonment in penitentiary for 2 years. Sec. 10.	Any court of United States of competent jurisdiction in district where offense was committed. Sec. 10.
2. False classification.		
3. False weighing.		
4. False representation of the contents of a package.		
5. False report of weight.		
6. Any other device or means to obtain transportation for property at less than regular rates. Sec. 10.		

PROHIBITIONS	PENALTY	ENFORCEMENT
(24) To induce common carriers to discriminate unjustly in transportation of property, or aid or abet therein. Sec. 10.	Misdemeanor. Fine \$5,000. Imprisonment in penitentiary for 2 years. Damages to party injured. Sec. 10.	Same as above.
(25) To keep any other accounts, records or memoranda than those prescribed or approved by the Commission. Sec. 20.	Misdemeanor. Fine from \$1,000 to \$5,000. Imprisonment in penitentiary from 1 to 3 years. Sec. 20.	Any court of competent jurisdiction. Sec. 20.
(26) To make false entries.	Same as above.	Same as above.
(27) Willfully destroy, mutilate, alter or falsify records.		
(28) Willfully neglect or fail to make full, true and correct entries. Sec. 20.		
(29) To charge more or less for interchangeable mileage tickets than is specified in tariff. Sec. 22.	Misdemeanor. Fine \$5,000. Imprisonment in penitentiary for 2 years. Sec. 22.	Any court of United States of competent jurisdiction in district where offense was committed. Sec. 22.
(30) To willfully fail to file and publish the tariffs or rates and charges as required by said Act or strictly to observe such tariffs until changed according to law. Elkins Act. Sec. 1.	Misdemeanor. Fine not less than \$1,000 nor more than \$20,000 for each offense. Elkins Act. Sec. 1.	Any court of United States of competent jurisdiction in proper district.
(31) To knowingly offer, grant or give or solicit, accept or receive any rebates, concession or discrimination. Elkins Act. Sec. 1.	Misdemeanor. Fine from \$1,000 to \$20,000.	Same as above.

ART. V. PROCEDURE BEFORE THE COMMISSION**Sec. A. Petition**

Any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic, or municipal organization, or the railroad commission of any State or Territory may apply to the Commission by petition, which shall briefly state the grounds of complaint. Sec. 13.

The Commission may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made. Sec. 13.

Sec. B. Notice

The Commission shall forward a copy of the petition to each defendant with a notice to satisfy or answer the same within a specified time. If, within the time specified, reparation shall be made, the carrier shall be relieved of liability to complainant for this particular violation of law. If the carrier shall not satisfy the complaint within the time specified or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper. Sec. 13.

Sec. C. Evidence

The testimony of any witness may be taken after a cause or proceeding is at issue on petition and answer. The Commission may order testimony to be taken by deposition at any stage of the investigation. Witnesses can be compelled to appear and testify and produce documentary evidence before the Commission. Sec. 12.

Copies of or extracts from the schedules, tariffs, contracts, reports, etc., filed with the Commission, shall be received as *prima facie* evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings. Sec. 16.

Sec. D. Decision, Order or Requirement

The Commission must make a report in writing in respect to the investigation, which shall state the conclusions of the Commission together with its decision, order or requirement, and in case damages are awarded, the report shall include the findings of fact on

which the award is made. Copies of the report must be furnished to all complainants and defendants. Sec. 14.

When the proceeding is under Section 15 to reduce a rate, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable rate to be thereafter observed in such case as the maximum to be charged; and what regulation or practice in respect to such transportation is just, fair and reasonable to be thereafter followed; and to make an order that the carrier shall cease and desist from such violation, and shall not thereafter publish, demand or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and shall conform to the regulation or practice so prescribed.

All orders, except for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order. Sec. 15.

The Commission may make orders for the payment of money. Sec. 16.

Every order shall be forthwith served by mailing a copy to any one of the principal officers or agents of the carrier at its usual place of business; and the registry mail receipt shall be *prima facie* evidence of the receipt of such order by the carrier in due course of mail. Sec. 16.

Sec. E. Modification of Orders

All orders may be suspended, modified or set aside by the Commission or suspended or set aside by a court of competent jurisdiction. Sec. 15.

The Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper. Sec. 16.

Upon rehearing the Commission may reverse, change or modify the original decision. Sec. 16a.

Sec. F. Supplemental Orders

When the proceeding is under Section 15 to reduce a rate and the carriers fail to agree upon the division of the joint rate, the Commission may, after hearing, make a supplemental order and prescribe the proportion to be received by each carrier.

Sec. G. Enforcement of Orders**(1) Order to Pay Money**

Complainant or any person for whose benefit the order was made may file a petition in the Circuit Court of the United States, in the proper district, stating the causes for which he claims damages, and the order of the Commission. Such suits shall proceed like other civil suits for damages, except the findings and order of the Commission shall be *prima facie* evidence of the facts therein stated and the petitioner shall not be liable for costs in the Circuit Court, nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal and may be allowed an attorney's fee.

(2) Order Other Than for the Payment of Money

The Commission or any party injured may apply to the Circuit Court by petition for the enforcement of such order by writ of injunction or other proper process, mandatory or otherwise. Sec. 16.

For failure to obey any order made under Section 16 shall forfeit to the United States the sum of \$5,000 for each offense. Sec. 16.

No injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing after not less than five days' notice to the Commission. Sec. 16.

Sec. H. Rehearing

Any party may make application to the Commission for rehearing of any decision, order or requirement which may be granted in the discretion of the Commission if there is sufficient reason but such application shall not stay the enforcement of the decision of the Commission without its special order. Upon such rehearing the Commission may reverse, change or modify the original decision. Sec. 16a.

Sec. I. Special Counsel

The Commission may, with the consent of the Attorney-General, employ special counsel in any proceeding under this Act. Sec. 16.

ART. VI. CIVIL PROCEDURE IN THE COURTS IN AID OF THE DECISIONS, ORDERS AND REQUIREMENTS OF THE INTERSTATE COMMERCE COMMISSION

Sec. A. Commencement of Proceedings

Upon request of the Commission, it shall be the duty of any District Attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General all necessary proceedings for the enforcement of the provisions of this Act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. Sec. 12. See also Elkins Act, Sec. 3.

For any violation of the Act, the carrier shall be liable to any person injured for the full amount of damages, attorney's fee and costs. Sec. 8.

Any person having a claim for damages may either make complaint to the Commission, or may bring suit in any District or Circuit Court of competent jurisdiction, but cannot pursue both remedies. Sec. 9.

If any person induce a carrier to discriminate or aid or abet therein, such person and the carrier shall be liable jointly or severally, in an action on the case in any court of the United States of competent jurisdiction, for all damages. Sec. 10.

Sec. B. Venue of Suits

Suits to enforce orders for payment of money may be maintained by the joint plaintiffs against the joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants. Sec. 16.

Suits to recover forfeitures are brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs. Sec. 16.

In enforcement of orders of the Commission other than to pay money, the Commission or any party injured may apply, by petition, to the Circuit Court in the district where such carrier has its principal operating office, or in which the violation or disobedience of such order shall happen, for enforcement. Sec. 16.

The venue of suits brought in any of the Circuit Courts of the United States against the Commission to enjoin, set aside, annul or suspend any order or requirement of the Commission shall be in the district where the carrier against whom such order or require-

ment may have been made, has its principal operating office and may be brought at any time after such order is promulgated. If the order or requirement has been made against two or more carriers then in the district where any one of said carriers has its principal operating office, and if the carrier has its principal operating office in the District of Columbia, then the venue shall be in the district where said carrier has its principal office; and jurisdiction to hear and determine such suits is hereby vested in such courts. Sec. 16.

Suits brought by the Commission against carriers for departure from published rates and unlawful discrimination under Section 3 of the Elkins Act must be in the Circuit Court of the United States sitting in equity having jurisdiction, or in any judicial district or State where the act was committed. Elkins Act, Sec. 3.

Sec. C. Service of Process or Notice

In suits to enforce orders for payment of money by joint plaintiffs against joint defendants, service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. Sec. 16.

In enforcement of orders of the Commission, other than to pay money, the petition shall be served upon the carrier in such manner as the court may direct. Sec. 16.

No injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing after not less than five days' notice to the Commission. Sec. 16.

Suits by Commission against carrier for departure from published rates and unlawful discrimination under Section 3 of the Elkins Act, shall be upon such notice as the court shall direct. Elkins Act, Sec. 3.

Sec. D. Enforcement of Order to Pay Money

If a carrier does not comply with an order for the payment of money within the time limit in such order, complainant or any person for whose benefit such order was made may file in the Circuit Court of the United States, in proper district, a petition setting forth briefly the causes for which he claims damages and the order of the Commission. Such suit proceeds like other civil suits for damages, but the order of the Commission shall be *prima facie* evi-

dence of the facts therein stated. The petitioners shall not be liable for costs in the Circuit Court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If petitioner prevails he may recover attorney's fee. Sec. 16.

In suits to enforce orders for the payment of money, there may be joint plaintiffs and joint defendants, and the recovery may be in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff. Sec. 16.

No injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing after not less than five days' notice to the Commission. Sec. 16.

Sec. E. Enforcement of Orders Other Than to Pay Money

The Commission or any party injured may apply by petition to the Circuit Court in the district where such carrier has its principal operating office, or in which the violation or disobedience of such order shall happen, for enforcement, and shall be served in such manner as the court may direct, and the court shall prosecute such inquiries and make such investigations through such means as it shall deem needful in the ascertainment of the facts at issue or which may arise upon the hearing of such petition. If upon such hearing as the court may determine to be necessary, it appears that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by writ of injunction, or other proper process, mandatory or otherwise, to restrain the defendants from further disobedience, or enjoin obedience, and shall have the powers ordinarily exercised in compelling obedience to the writs of injunction and mandamus. Sec. 16.

No injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing after not less than five days' notice to the Commission. Sec. 16.

May issue mandamus upon application of Attorney-General at request of the Commission. Sec. 20.

Sec. F. Compulsory Process

In case of disobedience to a subpoena, the Commission or any party may invoke the aid of any court of the United States, and a failure to obey the order of the court may be punished by said court as a contempt thereof. Sec. 12.

Any person may be compelled to appear and give his deposition and produce documentary evidence in the same manner. Sec. 12. See also Elkins Act, Sec. 3.

Sec. G. Mandamus

May have mandamus in enforcement of orders other than to pay money. Sec. 16.

The Circuit and District Courts of the United States shall have jurisdiction, upon the application of the Attorney-General, at the request of the Commission, where there is a violation of or a failure to comply with the Act, to issue mandamus. Sec. 20.

The Circuit and District Courts of the United States may issue mandamus against carrier to move interstate traffic or to furnish cars. Sec. 23.

Sec. H. Suits for Recovery of Forfeitures

The forfeiture provided for in this Act shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office or in any district through which the road of the carrier runs. Sec. 16.

The District Attorneys under the direction of the Attorney-General prosecute for the recovery of forfeitures. Costs are paid out of the appropriation for the courts of the United States. Sec. 16.

Attorney-General may sue to recover forfeitures in case of rebate. Elkins Act, Sec. 1.

Sec. I. Appeal

If a carrier does not comply with an order for the payment of money, a suit for enforcement may be filed in the Circuit Court which shall proceed in all respects like other civil suits for damages except that on the trial of such suit the findings and order of the Commission shall be *prima facie* evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the Circuit Court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. Sec. 16.

The provisions of the "Expediting Act," approved February 11th, 1903, are made applicable to all suits to enforce any order or requirement of the Commission. Sec. 16. Section 2 of the "Expediting Act" provides that in every suit in equity pending or hereafter brought in any Circuit Court of the United States under any

said acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the Circuit Court will lie only to the Supreme Court and must be taken within 60 days from the entry thereof.

From any action by the court upon a petition for the enforcement of an order of the Commission other than to pay money, an appeal shall lie by either party to the Supreme Court of the United States; but such appeal shall not vacate or suspend the order appealed from. Sec. 16.

An appeal may be taken from any interlocutory order or decree granting or continuing an injunction in any suit, but shall lie only to the Supreme Court of the United States. The appeal must be taken within thirty days from the entry of such order or decree. Sec. 16. In suits by the Commission against carriers for departure from published rates and unlawful discrimination under Section 3 of the Elkins Act, an appeal may be allowed as now provided by the Elkins Act, Sec. 3.

Sec. J. Precedence of Cases

In enforcement of order other than to pay money, on appeal the case shall have priority in hearing and determination over all other causes, except criminal causes. Sec. 16.

The Act to expedite the hearing and determination of suits in equity, is made applicable to any proceeding in equity to enforce any order or requirement of the Commission, including the hearing on an application for a preliminary injunction or any of the provisions of the Act to regulate commerce. The Attorney-General must file the certificate provided in said Act in all cases, and upon appeal, the case shall have priority in hearing and determination over all other causes, except criminal causes. Sec. 16.

Where appeal is taken from an interlocutory order or decree granting or continuing an injunction, it shall take precedence in the appellate court over all other causes, except causes of like character and criminal causes. Sec. 16.

Suits by Commission against carrier for departure from published rates or unlawful discrimination shall have precedence. Elkins Act, Sec. 3.

ART. VII. ELKINS ACT, SECTION 3**Civil Procedure in the Courts by the Interstate Commerce Commission Against any Carrier, for Departure from Published Rates or Unlawful Discrimination****Sec. A. Petition**

When the Commission has reasonable ground for belief that any carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discrimination forbidden by law.

Sec. B. Venue

Any Circuit Court of the United States sitting in equity having jurisdiction, and when the act was committed in more than one judicial district or State, it may be tried in either district or State.

Sec. C. Notice

Upon such notice and in such manner as the court shall direct.

Sec. D. Parties

To make such other persons or corporations parties thereto as the court may deem necessary.

Sec. E. Hearing

It shall be the duty of the court summarily to inquire into the circumstances upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and must be satisfied of the truth of the allegations of the petition.

Sec. F. Enforcement

The court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs and process against both carrier and parties interested in the traffic.

It shall be the duty of the District Attorneys under the direction of the Attorney-General upon his own motion or upon the request of the Commission to prosecute the cases.

Sec. G. Compulsory Process

Courts can compel witnesses to attend and answer and produce books and papers.

Sec. H. Appeal

Appeal allowed as now provided by law.

ART. VIII. MISCELLANEOUS PROVISIONS**Sec. A. Examiner Divulging Facts**

Must not divulge facts or information which may come to his knowledge during the course of such examination. Penalty: Fine \$5,000; imprisonment for 2 years. Sec. 20.

Sec. B. Immunity Provisions

In suits against common carriers for recovery of damages, any director, officer, receiver, trustee or agent of the company may be compelled to attend and testify and produce books and papers; such evidence or testimony shall not be used against such person on the trial of any criminal proceeding. Sec. 9.

The claim that any testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding. Sec. 12. See Elkins Law, Feb. 19, 1903, Sec. 3. See Act Feb. 11, 1893. See Act June 30, 1906, *infra*.

Sec. C. Interchange of Traffic

Provisions requiring same shall not be construed as requiring carriers to give the use of their tracks or terminal facilities to another carrier engaged in like business. Sec. 3.

Sec. D. Interpretation Clauses

"Common carrier" includes express companies and sleeping car companies. Sec. 1.

"Railroad" includes all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad whether owned or operated under a contract, agreement or lease, and shall also include all switches, spurs, tracks and terminal facilities of every kind used or necessary

in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property. Sec. 1.

"Transportation" includes cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all service in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. Sec. 1.

"Carrier" shall be held to mean "common carrier." Sec. 6.

Sec. E. Liability of Carrier

Any common carrier, railroad or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage or injury to such property caused by it or by any common carrier, railroad or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule or regulation shall exempt such common carrier, railroad or transportation company from the liability imposed. Sec. 20.

The common carrier, railroad or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment or transcript thereof. Sec. 20.

Sec. F. Limitation of Certain Proceedings

All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and a petition for the enforcement of an order for the payment of money shall be filed in the Circuit Court within one year from the date of the order, provided that claims accrued prior to the passage of this Act may be presented within one year. Sec. 16.

Sec. G. Notice

A statement of the charges made shall be forwarded by the Commission to the common carrier who shall be called upon to satisfy

or to answer the same in writing within a reasonable time, to be specified by the Commission. Sec. 13.

— No injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing after not less than five days' notice to the Commission. Sec. 16.

— Every order of the Commission shall be forthwith served by mailing to any of the principal officers or agents of the carrier at his usual place of business a copy thereof, and the registry mail receipt shall be *prima facie* evidence of the receipt of such order by the carrier in due course of mail. Sec. 16.

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of. Sec. 14.

Where the Commission has made an award for damages and there is a suit in court for enforcement against joint defendants, service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. Sec. 16.

Sec. H. Reparation

In case of unjust discrimination, may have action for all damages caused by or resulting therefrom. Sec. 10.

Complaints against carriers for violation of Act, damages may be awarded by Commission, if reparation not made by carrier. Secs. 8, 13, 14, 16.

Sec. I. State Railroad Commissions

Interstate Commerce Commission may investigate complaints at request thereof. Sec. 13.

Sec. J. Witness Fees

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Sec. 18.

CHAPTER II

THE ACT TO REGULATE COMMERCE, TOGETHER WITH A DIGEST OF THE PRINCIPAL CASES RELATING THERETO, DECIDED BY THE INTERSTATE COMMERCE COMMISSION AND THE FEDERAL COURTS

Carriers and Transportation Subject to the Act—Act Does Not Apply to Transportation Wholly Within One State

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SEC. 1. (As amended June 29, 1906.) That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

Express Companies and Sleeping Car Companies Included—What the Terms "Railroad" and "Transportation" Include

The term "common carrier" as used in this Act shall include express companies and sleeping car companies. The term "railroad," as used in this Act, shall include all bridges and ferries used or opera-

ted in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property; and the term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto.

Charges Must Be Just and Reasonable

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

Free Passes and Free Transportation Prohibited—Excepted Classes—Interchange of Passes—Penalty for Violation

(*As Amended April 13, 1908.*) "No common carrier subject to the provisions of this Act shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge and boards of managers of such Homes; to necessary caretakers of live stock, poultry, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to railway mail service employees, postoffice inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses

attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: *Provided further*, That the term 'employees' as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term 'families' as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, and any amendment thereof." (See Sec. 22.)

Railroad Companies Prohibited From Transporting Commodities in Which They are Interested—Timber and Products Thereof Excepted

From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest direct or indirect except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

Switch Connections—Switch Connections May be Ordered by the Commission

Any common carrier subject to the provisions of this Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and main-

tenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper, such shipper may make complaint to the Commission, as provided in section thirteen of this Act, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor and the Commission may make an order, as provided in section fifteen of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money.

Construction of Act. The Act will be construed, if possible, so as to facilitate and promote commerce, and not to hamper or destroy it, *Tex. &c. Ry. v. I. C. C.*, 162 U. S. 197, and should be broadly construed, *I. C. C. v. East Tenn. &c.*, 85 Fed. R. 107. The construction of the English Railway Acts by the English courts must be adopted so far as the Act to regulate commerce adopts the provisions of such acts. *I. C. C. v. Alabama*, 168 U. S. 144; *Texas &c. Ry. v. I. C. C.*, 162 U. S. 197; *Gulf &c. v. Miami &c.*, 86 Fed. R. 407.

The Act will not be construed so as to abridge the common law rights of carriers further than its terms and purposes require. *I. C. C. v. Louisville*, 73 Fed. R. 409.

The entire Act must be considered to ascertain the intent, and not detached portions thereof, and the general purpose of the Act and the evils sought to be remedied must be always kept in mind. *Van Patten v. Chicago &c.*, 81 Fed. R. 547.

Only railway carriers are included in the Act, *U. S. v. Morsman*, 42 Fed. R. 448, and it is not applicable to independent carriers by water. *Ex parte Koehler*, 30 Fed. R. 869.

Commerce between points in the same State but which is carried through another State in reaching its destination, is interstate commerce. *Hanley v. Ry.*, 187 U. S. 617; *Milk Producers v. D., L. & W. Ry.*, 7 I. C. C. 92; see *Lehigh V. Ry. v. Penna.*, 145 U. S. 192.

A carrier whose lines are wholly within one State but who participates in through rates and through bills of lading, is subject to the operation of the Act with respect to goods from other States. *Cincinnati Ry. v. I. C. C.*, 162 U. S. 184; *Baer &c. v. Mo. Pac. Ry.*, 13 I. C. C. 329; *Leonard v. K. C. S. Ry.*, 13 I. C. C. 573.

The Act does not include transportation wholly by water, nor by team or wagon. *Cary et al. v. E. S. Ry.*, 7 I. C. C. 286.

A railroad lying wholly within a State which transports freight, whether coming from within or without the State, solely on local bills of lading on a special contract limited to its own lines, and without dividing charges with any other carriers or assuming any obligations to or for them, does not come within the provisions of the Act and is not bound to make any report of its business to the Commission. *U. S. v. R. R. Co.*, 81 Fed. R. 783; *C. N. O. & T. P. R. R. Co. v. Commission*, 162 U. S. 184, and *I. C. C. v. B. Z. & C. R. R.*, 77 Fed. R. 942; see *Leonard v. K. C. S. Ry.*, 13 I. C. C. 573.

Through routing is the test as to what constitutes a common control, management or arrangement for a continuous carriage or shipment. *R. R. Co. v. I. C. C.*, 162 U. S. 184; *L. & N. R. R. Co. v. Behlmer*, 175 U. S. 648; *U. S. v. Seaboard*, 82 Fed. R. 563. Withdrawal of lake-and-rail rates temporarily, does not affect jurisdiction of Commission. *Benton Transit Co. v. B. H. St. Joe Ry. Co.*, 13 I. C. C. 542.

Foreign Commerce. Upon the subject of the jurisdiction of the Commission over foreign commerce, see *N. Y. Board of Trade &c. v. Pa. Ry.*, 4 I. C. C. 447; the *Import Rate Case*, 162 U. S. 197; *Armour v. United States*, 209 U. S. 56; and as to publication of import and export rates, see *Export and Domestic Traffic in Grain Case*, 8 I. C. C. 214; *Publication and Filing of Tariffs on Exports and Imports*, 10 I. C. C. 55; and *Pittsburg Plate Glass Case*, 13 I. C. C. 87.

Ocean Carriers, Jurisdiction of the Commission. The Commission has no jurisdiction over ocean carriers engaged in the transportation of property which moves on through bills of lading or otherwise from the seaboard or from points in the interior of the United States to foreign countries, because

(1) All such shipments must originate at the ports or at some interior point in the United States. If the shipment originates at the port and is destined to a foreign country not adjacent, by the plain terms of Sec. 1 of the Act, the Commission is without jurisdiction because an inland movement of export or import traffic is a condition precedent to the attaching of jurisdiction. If the shipment originate at some interior point or destined to such point, by the plain terms of Sec. 1 of the Act, the jurisdiction of the Commission is limited to the carriage between the port and such interior point.

(2) Congress has not sought to exercise control over all-water carriage, either transoceanic or inland, because the necessity for the

Act arose out of the unjust and discriminatory practices of the rail lines.

(3) The express terms of the Act (Sec. 1) limit the jurisdiction to the transportation of property intended for export from point of origin to the port of transshipment, or when imported, from port of entry to destination, confining the jurisdiction exclusively to the inland part of the journey.

(4) The Senate Committee's construction of the Act of 1887.

(5) The Act of 1887, Sec. 6, further identified the carriers subject to the provisions of the Act.

(6) No machinery is provided for the regulation of such carriers, and no recognition of them in the Act.

(7) Against public policy and the Commission is without authority to enforce compliance with the law.

(8) Omission to post tariffs or other penal offenses committed without the United States not punishable because not within the jurisdiction of a District Court of the United States.

(9) Congress provided supplemental means for enforcement of posting tariffs where carriage was from the United States through a foreign country (presumably adjacent) into the United States, when no analogous or other provision is made to control extraterritorial carriers.

(10) The decisions of the courts upon the subject of the jurisdiction of the Commission.

(11) The ocean is a highway free to all and there is no such thing as stability of rates upon the water. It is more desirable to leave them unhampered by legal restrictions to meet natural competitive conditions and to bid against each other for cargo. *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co.*, 13 I. C. C. 266; *Lykes Steamship Line v. Commercial Union et als.*, 13 I. C. C. 310; *Armour v. U. S.*, 209 U. S. 56.

Adjacent Foreign Country, would seem to mean adjacent in the sense of the possibility of substantial continuity of rails. *Lykes Steamship Line v. Commercial Union et als.*, 13 I. C. C. 310.

From One Place in a Territory to Another Place in the Same Territory. Case dismissed for want of jurisdiction when the Territory was admitted as a State pending proceedings before the Commission. *Hussey v. C. R. I. & Pac. Ry.*, 13 I. C. C. 366.

Common Control, Management or Arrangement, for Continuous Carriage or Shipment. This provision formerly applied to a route composed wholly of railroads as well as to one which was partly by railroad and partly by water. The words now plainly apply only

to transportation which is partly by railroad and partly by water. With respect to transportation entirely by rail the words in parentheses may be eliminated from the statute. The test of jurisdiction is not the arrangement under which the freight is handled, but rather the character of the transportation itself.

The entire movement of freight from point of origin to point of destination, must be regarded, and every agent engaged in that movement thereby became subject to Federal control, and every carrier by rail which participated in an interstate movement by rail becomes thereby subject to the Act to Regulate Commerce. *Leonard v. K. C. S. Ry.*, 13 I. C. C. 573.

Refrigeration. The carrier must provide refrigeration for perishable traffic in transit and charges therefor are subject to the statutory requirement of reasonableness. *Farmers v. N. E. of S. C. Ry.*, 6 I. C. C. 295; *Georgia Peach &c. v. A. C. L. Ry.*, 10 I. C. C. 255; *Refrigeration of Fruits on Pere Marquette and M. C. Ry. Cos.*, 10 I. C. C. 360; *In Matter of Charges for Transportation, etc.*, 11 I. C. C. 129; and *Waxelbaum v. A. C. L. Ry.*, 12 I. C. C. 178.

Free Passes. Land and immigration agents must be *bona fide* and actual employees of carriers. *Complaint of Illinois Central Ry. Co.*, 12 I. C. C. 7. See *Administrative Rulings and Opinions*.

As to employees of telegraph companies. *Railroad-Telegraph Companies*, 12 I. C. C. 10.

Newspaper employees on special newspaper trains, not entitled to. *Newspaper Employees on Newspaper Trains*, 12 I. C. C. 15.

Cannot exchange with transfer or baggage express companies. *Frank Parmalee Company*, 12 I. C. C. 39.

Passenger assumes risk of ordinary negligence when he accepts it with conditions, but carrier liable for willful or wanton negligence. *Adams v. No. Pac. Ry.*, 192 U. S. 440; *Boching v. Chesapeake &c.*, 193 U. S. 442.

Contract for free pass made for valuable consideration, October 2, 1891, not invalidated by Act June 29, 1906. *Mottley v. L. & N. R. Co.*, 150 Fed. R. 407. See under Sec. 2.

Informal Rulings on the Subject of Passes Authorized or Approved by the Commission in Conference

Local Attorneys and Surgeons who carry on private practice and are occasionally called upon to perform services for a carrier, are not entitled to free transportation. To entitle them to it they must be in the service of a carrier in such sense that their chief occupation and

paramount daily duty is to look after its affairs in the capacity in which they are employed, and such work must engage their time, attention and labor as their principal daily concern and interest, and the salary received therefor must be the chief source of the income derived by them from their daily toil or labor.

Local surgeons and attorneys may be given free transportation over the line by which they are employed for the purpose of enabling them to attend to the subject-matter or business then in hand. They are not entitled to interchange of passes.

Nothing but Money may be Lawfully Received or Accepted in Payment for Transportation, whether of persons or property, or for any service in connection therewith. Transportation cannot be used as a medium for discharging obligations or debts, nor in payment for any service, or for work done, whether by a laborer or an architect, or for real estate or for material.

Representatives of International and Other Correspondence Schools are not entitled to, nor **Inspectors of Employees' Watches**, nor **Solicitors for Insurance Companies**.

In cases where contracts were entered into for free transportation in consideration of services rendered, claims for damages for personal injuries, payment of bills for advertising, or for real estate and rights of way, the contracts are nullified by the act in respect to free transportation, and the carriers cannot longer transport free in such cases.

The fact that the contract was entered into before the law went into effect does not alter the situation. It is manifest that the power of Congress to legislate in regulation of interstate commerce cannot be obstructed by the private contracts of individuals. Such contracts must give way under the terms of the new law.

Parties should consult with counsel as to whether suit may be brought on such a contract in order to commute the value of the free transportation agreed upon into a money judgment against the carriers.

A carrier cannot honor a state pass for an intrastate portion of an interstate journey. An interstate journey has commenced the moment a passenger boards the train for the purpose of going to a point in another State.

Express Companies cannot carry free or at reduced rates freight for the officials or employees of any railroad or express company. Officials and employees of such companies may exchange free transportation.

The Officers and Workers of the Women's Christian Temper-

ance Union are not entitled to, nor editors of Newspapers publishing advertisements, nor Agents of a Circus traveling upon the regular trains of the carrier.

Caretakers of Stock are entitled to where they go out to meet stock and bring it in, but not for those who go out to buy.

Customs Inspectors traveling in the discharge of their duties as inspectors of merchandise are entitled to, but not Special Treasury Agents and other employees of that Department.

When a carrier grants free passage or reduced rate transportation to the attendant with shipment of horses it must be made the subject of a tariff provision.

The several classes of persons who may lawfully enjoy free transportation seem to divide themselves into three groups, viz.:

(1) To its employees and their families, its officers, agents, surgeons, physicians and attorneys-at-law.

(2) To ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and for Soldiers' and Sailors' Homes and Boards of Managers of such Homes.

(3) To necessary caretakers of live stock, poultry and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to railway mail-service employees, post office inspectors and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the carrier is interested, persons injured in wrecks and physicians and nurses attending such persons.

The persons comprised within the first and second groups of enumerated classes may use transportation for their personal benefit or pleasure.

As to those enumerated in the third group, the right to use free transportation is limited to the occasions of actual employment in the designated capacity.

The Commission has held that, by reasonable intendment a carrier may issue free transportation to the families of its agents, officers, surgeons, physicians and attorneys-at-law, as well as to the families of its employees, and they may have interchange of free transportation. A reasonable definition of a family for the purposes of this Act, would include persons who are related by blood or marriage and habitually reside together under one roof and are

actually dependent for support upon the person who acts as the head of the household. Under such circumstances a father and sister of one entitled to use free transportation, may lawfully be given free passes.

The issuance of free passes, free transportation, or free tickets must be to actual and *bona fide* employees of carriers engaged in interstate commerce.

A Minister of Religion who ceases actively to follow his profession and becomes the president of an educational institution is not entitled to receive and use free transportation, nor are sisters of **charity** superintending or teaching in educational institutions at which tuition is charged. The fact that a person may freely give his or her services to a public institution does not necessarily bring that person within the excepted classes enumerated in the act. The character of the institution is the determining factor. If the institution is of the nature indicated in the act, those persons who are engaged in its service, whether compensated or not for their labors, are entitled to use free transportation. On the other hand, even though they are not compensated for their labors, persons in the service of institutions that are not charitable or eleemosynary in the sense in which those words are used in the Act, are not entitled to use free transportation.

Passes to Necessary Caretakers of Live Stock, Poultry and Fruit must be confined to such persons who actually accompany such shipments while they are in transit and to return to the place from which they started, or to start from the destination of the shipment, go where they meet or take charge of it, and return to such destination. The law does not permit the issuance of time or annual passes to such caretakers.

Whether a person is engaged in charitable work is a question that the railroad companies can properly decide for themselves upon their own investigation, being responsible, of course, under the law if the facts do not bear out their conclusions.

The Bureau of Insular Affairs cannot contract for the Philippine government for the transportation at special through rates by rail and Pacific Ocean steamers between the United States and Manila, of (a) employees of the insular department whose fares are paid by the government, and (b) employees, members of their families, students and others, whose fares are not actually paid by the government although settled for by the government with the transportation company. Sec. 22 of the Act, so far as it touches the right of the United States or municipal governments to enjoy free

or reduced rates, is confined under its express terms to the carriage, storage, or handling of property.

Use by Other Than Employee. Where a common carrier issued an interstate free pass to an employee who delivered the pass to a person not authorized to receive or use it and the said party used the same on an interstate journey, he violated the Act of June 29, 1906, and the employee delivering such pass is guilty of aiding and abetting in said violation. *United States v. Williams*, 159 Fed. R. 310.

Just and Reasonable Rates. To inquire whether the rates which have been charged and collected are reasonable, is a judicial act, but to prescribe rates which shall be charged in the future, is a legislative act. *I. C. C. v. Cin. &c. Ry.*, 167 U. S. 479.

In determining whether a particular rate is just and reasonable, the interest of the carrier, the shipper and the public must all be considered, *I. C. C. v. R. R. Co.*, 167 U. S. 511; *Covington v. Sanford*, 164 U. S. 578; *Texas v. I. C. C.*, 162 U. S. 197; *I. C. C. v. Alabama &c.*, 74 Fed. R. 715; *I. C. C. v. So. Ry.*, 105 Fed. R. 703, and the greatest weight should be given to the following considerations: the opinion of expert witnesses; the effect of the rate charged on the growth and prosperity of the city; the cost of transportation as compared with the rates charged, and the rates in force at numerous other cities, when the circumstances are as nearly similar as may be to those prevailing at such city. *I. C. C. v. So. Ry.*, 117 Fed. R. 741; *Cannon v. M. & O. Ry.*, 11 I. C. C. 537; *American Florists v. U. S. Express Co.*, 12 I. C. C. 120.

The conditions and circumstances surrounding the traffic and which enter into and control the nature and character of the service performed by the carrier, involving volume or lightness of traffic, expenses of construction and operation, competition of carriers not subject to the law, competitive points, space occupied by freight, value of freight and risk of earnings to carrier. *New Orleans v. Ill. Cent. Ry.*, 2 I. C. C. 777; *New Orleans v. Ill. Cent. Ry.*, 3 I. C. C. 534; *U. S. v. Debs*, 64 Fed. R. 723; *I. C. C. v. East Tenn. &c. Ry.*, 85 Fed. R. 107; *I. C. C. v. L. & N. R. R.*, 73 Fed. R. 409; *Goodhue v. C. G. W. Ry.*, 11 I. C. C. 685. The court should look over the entire field of service. *Union Pac. &c. v. U. S.*, 104 U. S. 662.

The sworn return of the officers of the road made to state authorities for the purposes of taxation, is admissible but not conclusive. *L. & N. v. Brown*, 123 Fed. R. 926. The fair value of the property being used must be considered. *Smith v. Ames*, 169 U. S. 546.

The presumption is the rates fixed by the State Commission are reasonable. *Minneapolis v. Minnesota*, 186 U. S. 257.

The findings of fact by the Commission as to the reasonableness of rates, which have been approved by the Circuit Court, will not usually be reviewed by the Supreme Court. *Ill. Cent. Ry. v. I. C. C.*, 206 U. S. 441; *Cincinnati v. I. C. C.*, 162 U. S. 184; *Cincinnati &c. v. I. C. C.*, 206 U. S. 154.

Reparation predicated upon the unreasonableness of an established rate, must be primarily brought through the Commission. *Texas & Pacific Ry. v. Abilene Cotton Oil Co.*, 204 U. S. 426. See *Reparation*.

Evidence of rebates is not competent to prove the unreasonableness of a rate in favor of a shipper who received them, and raises no presumption that the published rate is unreasonable. In passing upon an entire schedule of railway rates the controlling factor is the value of the property which is devoted to the public service, but the present science of railway accounting does not enable us upon any such basis to fix with certainty a reasonable rate upon a particular commodity between two points. *Frye & Bruhn v. No. Pac. Ry.*, 13 I. C. C. 501; *Kindel v. Express Companies*, 13 I. C. C. 475.

How to determine what is a just and reasonable rate. *Seaboard Air Line Ry. v. R. R. Com. of Alabama*, 155 Fed. R. 792.

Rates graduated according to length of haul. *Oklahoma & Arkansas Coal Traffic Bureau v. C., R. I. & P. Ry.*, 14 I. C. C. 216.

Rates voluntarily reduced by carrier. See under Sec. 16.

Reasonableness of minimum car loads. *Tayntor Granite Co. v. Montpelier & Wells River Ry.*, 14 I. C. C. 136.

Rates were established after prolonged negotiations especially for the purpose of permitting complainant to reach a particular market, and in preference to making a readjustment in some other direction or territory, and complainant having adjusted its business thereto, defendants may not by an arbitrary advance in those rates destroy complainant's business, there being no evidence that the rates advanced were less than the cost of service. *New Albany Fur. Co. v. Mobile, J. & K. C. Ry.*, 13 I. C. C. 594; *Western Oregon Lumber &c. v. So. Pac. Co.*, 14 I. C. C. 71.

The Commission has no authority to establish general rate schedules. *Corn Belt Meat Producers' Asso. v. C., B. & Q. Ry.*, 14 I. C. C. 376.

Railways are authorized to establish in the first instance their transportation charges and the presumption of right doing attaches

to their acts in the establishment of those rates. *Banner Milling Co. v. N. Y. C. & H. R. Ry.*, 14 I. C. C. 398.

Contracts for Rates. Weight to be given to agreements for rates, when their reasonableness is challenged. *Rhineland Paper Co. v. No. Pac. Ry.*, 13 I. C. C. 633.

Ordinarily a through rate ought not to exceed the sum of the locals, but the Commission has also held that where the sum of the local rates established by state authority is less than a reasonable interstate rate the higher rate may be charged. *Montg. Freight Bureau v. W. Ry. of Ala.*, 14 I. C. C. 150.

The reasonableness of a joint through rate is to be determined as a whole and not by the divisions of the respective carriers making up the route. *Gump v. B. & O. Ry.*, 14 I. C. C. 105.

Rates upon commodities according to the use to which such commodities are put, are improper. The carrier has no right to dictate the use to which commodities transported by it shall be put. Classification must be based upon a real distinction from a transportation standpoint. *Fort Smith Traffic Bureau v. St. L. & San Fran. Ry.*, 13 I. C. C. 651.

Difference in weight of commodity at point of origin and destination considered. *Topeka Banana Dealers' Asso. v. St. L. & S. F. Ry.*, 13 I. C. C. 620.

Increased cost of operation. *Burgess v. Trans. Freight Bureau*, 13 I. C. C. 677.

When carriers advance a rate which has been for some time in force, the burden of proof is upon them to show sufficient grounds for such advance.

Because the shippers' business has become phenomenally prosperous, this fact cannot justify an advance of a rate already reasonably high.

The test of the reasonableness of a rate is not the amount of the profit in the business of a shipper or manufacturer, but whether the rate yields a reasonable compensation for the service rendered. There is no presumption of wrong arising from a change of rate by the carrier, but the carrier, when properly called upon, must be able to give a good reason for making the change.

In determining the reasonableness of an advance in rates, consideration was given the fact that large increases in the business of the shippers had resulted in corresponding increase of revenue for the railroads. The inexpensiveness of the service; the rapidity of movement and necessity for special equipment, and such equip-

ment as the shippers were required to furnish and pay for; loading and unloading the cars; nature of the commodity carried, whether fragile or perishable, and the risk of loss or damage and the financial condition of the carriers. *Pacific Coast Lumber Co. &c. v. No. Pac. Ry.*, 14 I. C. C. 23.

When certain rates have been in force for a long period of time and business conditions have become well settled thereon and the carrier is earning a liberal income and paying liberal dividends while expending large sums in improvements and renewals, a material increase in those rates unaccompanied by a corresponding decrease in other rates places upon the carrier the obligation of justifying the increase.

The railroad rates from various points of production will determine, so far as transportation is concerned, the limit of the extent of the consuming territory which any given commodity can reach. Where there is a question of whether or not a rate is remunerative to the carrier on a particular commodity, it may be doubted whether the carriers can divert the equipment in such cases from the demands of other traffic offered to them.

An advance cannot be justified upon the theory that the increase in the rates will be absorbed by the decrease in the cost of the raw material. *Oregon & Washington Lumber &c. v. U. P. Ry.*, 14 I. C. C. 1.

No presumption of law that a freight rate upon a particular commodity is reasonably low exists because such rate has been duly published and filed by the carrier with the Commission. *Ill. Cent. Ry. v. I. C. C.*, 206 U. S. 441; *Warren Mfg. Co. v. So. Ry.*, 12 I. C. C. 381.

As to the previous existence of a rate. *Enterprise Mfg. Co. v. Ga. Ry.*, 12 I. C. C. 130; *Shiel & Co. v. I. C. Ry.*, 12 I. C. C. 210; *Warren Mfg. Co. v. So. Ry.*, 12 I. C. C. 381; *Burgess v. Trans. Freight Bureau*, 13 I. C. C. 677.

The circumstances of the carrier, its operating expenses, cost of transportation, grades, density or sparseness of population, volume of business, book charges, dividends, are all properly considered. *New Orleans v. C., N. O. & T. P. Ry.*, 2 I. C. C. 375; *Howell v. N. Y., L. E. & W. Ry.*, 2 I. C. C. 272; *Thurber v. N. Y. C. & H. R. R. R.*, 3 I. C. C. 473.

The failure of the carrier to secure a profit is not conclusive that the tariff of rates is unjust and unreasonable. *Reagan v. Farmers' &c.*, 154 U. S. 362.

Reasonableness of a rate is a question of fact. *Cin. Ry. v. I. C. C.*,

162 U. S. 184, 197; and is peculiarly a question for judicial investigation and decision. *Tift v. Sou. Ry.*, 123 Fed. R. 795.

Rates may be unreasonably low. *I. C. C. v. Cin. &c. Ry.*, 167 U. S. 511.

The average cost of carriage upon the entire system is an insufficient basis for concluding that the rate charged upon a particular portion of the system is unjust or unreasonable. *I. C. C. v. Lehigh Valley Ry.*, 74 Fed. R. 784.

Burden of showing that a particular rate is unreasonable or unjust is upon complainant. *I. C. C. v. Nashville &c. Ry.*, 120 Fed. R. 935.

Rates should bear a fair and reasonable relation to the antecedent cost of the traffic as delivered to the carrier and to the commercial value of such traffic. *P. H. Loud, Jr., v. S. C. &c. Ry.*, 5 I. C. C. 529.

The character of the traffic is material in determining rates. *New Orleans v. T. P. Ry.*, 10 I. C. C. 327; *Denison Light & Power Co. v. M., K. & T. Ry.*, 10 I. C. C. 337; *Colo. Fuel & Iron Co. v. So. Pac. Co.*, 6 I. C. C. 488; *Potter Mfg. Co. v. C. & G. T. Ry.*, 5 I. C. C. 514.

Dissimilar conditions may be considered. *Lincoln Creamery Co. v. U. P. Ry.*, 5 I. C. C. 156.

Rates upon lines of rival companies or different branches of the same company are properly considered. *Morrell v. U. P. Ry.*, 6 I. C. C. 121.

Comparison of rates, *Morrell v. U. P. Ry.*, 6 I. C. C. 121; *Western Lumber &c. v. So. Pac. Co.*, 14 I. C. C. 69; and in opposite directions, *Duncan v. A., T. & S. F. Ry.*, 6 I. C. C. 85, and *Morrell v. U. P. Ry.*, 6 I. C. C. 121; *Phillips v. G. T. W. Ry.*, 11 I. C. C. 659; *Pittsburg Plate Glass Co. v. P. C. C. & St. L. Ry.*, 13 I. C. C. 87.

Rate per ton per mile. *Farrar v. So. Ry. Co. and N. & W. Ry. Co.*, 11 I. C. C. 640; *Dallas v. G., C. & S. F. Ry.*, 12 I. C. C. 223.

Local rates are not properly compared with through rates. *Manufacturers &c. v. M. & St. L. Ry.*, 4 I. C. C. 79; *New Orleans v. I. C. Ry.*, 3 I. C. C. 534; *Crews v. R. & D. Ry.*, 1 I. C. C. 401.

The cost of transportation of the commodity and the needs of the shipper on the one hand, and the circumstances and financial condition of the carrier, have been considered. *Alleged Excessive Freight Rates on Food Products*, 4 I. C. C. 48; *Proposed Advance of Freight Rates*, 9 I. C. C. 382.

Distance is an important factor. *Cincinnati v. C., N. O. & T. P. Ry.*, 7 I. C. C. 180; *Milwaukee v. C., M. & St. P. Ry.*, 7 I. C. C. 481.

The hazard involved in transportation must be considered. *Masurite Explosive Co. v. Pittsburg & Lake Erie Ry.*, 13 I. C. C. 405.

Any special services rendered the shipper, are to be considered. *I. C. C. v. Detroit &c. Ry.*, 167 U. S. 633.

The capitalization of a railroad and the history of the capital account can be examined. *Tifton v. L. & N. Ry.*, 9 I. C. C. 160; *Proposed Advance in Freight Rates*, 9 I. C. C. 382; *Grain Shippers &c. v. I. C. R. R. Co.*, 8 I. C. C. 158.

Expenditures for construction and equipment. *Ill. Cent. Ry. v. I. C. C.*, 206 U. S. 441.

Need not be reduced to meet intrastate reductions by state Commissions. *Savannah v. C. & S. Ry.*, 7 I. C. C. 601.

A rate fixed by a state statute or a state commission is naturally and properly entitled to respectful consideration, but it has no greater sanctity, as applied to interstate traffic, than a rate established by a railroad company; and this Commission would not hesitate to decide upon proper evidence that a rate so established would be unjust either to a carrier or to a shipper, and to refuse to accept it as a basis for fixing an interstate rate. *Hope Cotton Oil Co. v. Ry.*, 12 I. C. C. 265; *Marshall Oil Co. v. C. & N. W. Co.*, 14 I. C. C. 210. There should be harmony if possible. *Corn Belt Meat Producers' Asso. v. C., B. & Q. Ry.*, 14 I. C. C. 376.

Party Rate Tickets cannot be confined to particular classes, but must be open to the general public. *Party Rate Tickets*, 12 I. C. C. 95; *I. C. C. v. B. & O. Ry.*, 145 U. S. 263; *Field v. So. Ry.*, 13 I. C. C. 298; *Kock Secret Service v. L. & N. Ry.*, 13 I. C. C. 523.

Side Tracks and Switch Connections. *Judson on Interstate Commerce*, Sec. 196; *Red Rock Fuel Co. v. B. & O. R. R. Co.*, 11 I. C. C. 438; *I. C. C. v. Indianapolis*, 99 Fed. R. 472; *U. S. v. B. & O. R. R.*, 153 Fed. R. 997; *Barden & Swartout v. L. V. R. R. Co.*, 12 I. C. C. 193; *McRae Terminal Co. v. So. Ry.*, 12 I. C. C. 270; *Rahway Valley Ry. v. D. L. & W. Ry.*, 14 I. C. C. 191.

An order of a state Commission directing the carrier to make delivery of interstate shipments upon a sidetrack not owned by it and therefore at a point off its line, imposes a burden on interstate commerce and is void. *McNeill v. So. Ry.*, 202 U. S. 543.

Carriers Cannot Refuse Transportation as defined in the act, but must, upon reasonable request, afford the same upon established rates filed and kept posted as required by law. *Waxelbaum v. A. C. L. Ry.*, 12 I. C. C. 178.

Carriers Must Provide Facilities for Transportation. See note to *Harp v. Choctaw &c. Ry.*, 61 C. C. A. 414; *Rice v. L. & N. Ry.*,

3 I. C. C. 162; Independent Refiners' Assn. v. N. Y. & P. Ry., 4 I. C. C. 162; Allowance to Elevators by Union Pacific Ry., 12 I. C. C. 85; Waxelbaum v. A. C. L. Ry., 12 I. C. C. 178; A. C. L. Ry. v. N. Car., 206 U. S. 1.

Terminal Facilities. Oregon &c. v. Northern &c., 51 Fed. R. 475.

Terminal Companies engaged in transportation of interstate commerce are subject to the act. Eichenberg v. So. Pac. Co., 14 I. C. C. 250.

Elevation of Grain defined. Allowances to Elevators by Union Pacific Co., 12 I. C. C. 85; Atchison v. M. P. Ry., 12 I. C. C. 111.

Carriers Cannot Transport Commodities in Which They are Interested. See I. C. C. v. C. & O. Ry., 200 U. S. 361.

Routing of Shipments. It is the duty of the carrier in the absence of routing instructions to the contrary, to forward shipments, having due regard to the interests of the shipper, ordinarily by that reasonable and practicable route over which the lowest charge for the transportation applies. Hennepin Paper Co., 12 I. C. C. 535.

Railroad Stations and Terminals. Preston & Davis v. D., L. & W. Ry., 12 I. C. C. 114; American Florists v. U. S. Express Company, 12 I. C. C. 120; Jones et al. v. St. L. & San F. Ry., 12 I. C. C. 144. Stopping through trains. Atlantic Coast Line v. Wharton, 207 U. S. 328.

Marine Insurance. Unless a railroad intends to hold itself responsible for losses arising from the perils of the sea, it should tender to the public a transportation contract which leaves shippers free to arrange for their own marine insurance. Wyman, Partridge et als. v. Boston & Maine Ry., 13 I. C. C. 258.

Free Storage in Transit, not necessarily unlawful. Commercial Club of Duluth v. N. P. Ry., 13 I. C. C. 288.

Storage Charges. Carrier cannot charge for storage when grain is delivered to it for immediate shipment and there is a delay on account of shortage of cars. Distinction drawn between grain received for "immediate shipment" whereby the defendant was under the obligation, according to the terms of its tariff schedule, to supply cars for the forward movement as rapidly as convenience would permit, and in the meantime to insure and store the grain at its own expense.

A storage shipment implies an affirmative order by the shipper to hold the grain, and also a like order to move it forward to destination. Reparation allowed complainant for overcharges exacted for storage and insurance, when circumstances showed "immediate

shipment" was contemplated. *England v. B. & O. Ry.*, 13 I. C. C. 614.

Track Storage Charges, when associated with an interstate movement, appertain directly to interstate commerce. They represent the carrier's compensation for services rendered in connection with the transportation. A shipment is not completed until arrival at destination and delivery to the consignee; and the authority vested in Congress by the commerce clause of the Constitution covers everything related to the delivery of freight transported between the States. *Wilson Produce Co. v. Penna. Ry. Co.*, 14 I. C. C. 170.

Discrimination is not necessarily unlawful; it may be forced upon the carrier by controlling circumstances. In such a case the law is not infringed, and such discrimination is not unlawful unless made in the interest of a competing locality or commodity. *Wilson Produce Co. v. Penna. Ry.*, 14 I. C. C. 170.

As to the reasonableness of track storage charges and discrimination therein. *New York Hay Exchange Asso. v. Penna. Ry.*, 14 I. C. C. 178.

Demurrage. There can be no waiver of demurrage charges which accrue by reason of the refusal of consignees to accept shipments and unload cars pending a contest or dispute as to the reasonableness of the established rates. *Coomes & McGraw v. C., M. & St. P. Ry.*, 13 I. C. C. 192; *MacBride v. C., St. P. & C. Ry.*, 13 I. C. C. 571. On private cars. See opinion, 13 I. C. C. 378.

Demurrage charges and charges of a kindred nature are imposed as compensation to a carrier for an additional service not embraced in the rate, for which additional compensation may properly be exacted. *New York Hay Exchange Asso. v. Penna. Ry.*, 14 I. C. C. 178.

Carrier's Duty as to Unloading Cars. The carrier discharges its full duty if it places the carload upon its team tracks and brings the packages to the car door for delivery. It is under no obligation to furnish a place for assorting the packages and making delivery to the different individuals to whom the carload is addressed. There is no hard and fast rule as to whose duty it is to unload cars, but such rules, when made, are subject to the jurisdiction of the Interstate Commerce Commission. *Wholesale Fruit &c. v. A., T. & S. F. Ry.*, 14 I. C. C. 410.

Adequacy of Local Facilities—Stopping Interstate Trains. The adequacy of the local facilities existing at a station at which a through interstate train is required to stop by an order made under

state authority, may be considered by the Federal Supreme Court on writ of error to a state court in so far as the existence of such adequate local facilities is involved in the determination of the Federal question as to whether the order does or does not directly regulate interstate commerce.

An order made under state authority requiring a railroad company to stop on signal two of its through fast interstate mail trains at a small town, is void as a direct regulation of interstate commerce where in addition to several local trains daily the residents of such town are furnished daily one slower through train each way. *Atlantic Coast Line Ry. v. Wharton*, 207 U. S. 328.

Minnesota Rate Case—Sufficiency of Rates a Judicial Question—Conditions upon Right to Appeal—Excessive Penalties. The sufficiency of rates with reference to the Federal Constitution is a judicial question and one over which Federal courts have jurisdiction by reason of its Federal nature. If the law be such as to make the decision of the legislature or of a Commission conclusive as to the sufficiency of the rates, this court has held such a law to be unconstitutional. A law which imposes such conditions upon the right to appeal for judicial relief as works an abandonment of the right rather than face the conditions upon which it is offered, or may be obtained, is also unconstitutional. It may therefore be said that when the penalties for disobedience are by fines so enormous and imprisonment so severe as to intimidate the company and its officers from resorting to the courts to test the validity of the legislation, the result is the same as if the law in terms prohibited the company from seeking judicial construction of laws which deeply affect its rights.

Return upon Investment—Burdensome Conditions Invalid. Ordinarily a law creating offenses in the nature of misdemeanors or felonies relates to a subject over which the jurisdiction of the legislature is complete in any event. In the case, however, of the establishment of certain rates without any hearing, the validity of such rates necessarily depends upon whether they are high enough to permit at least some return upon the investment, and an inquiry as to that fact is a proper subject of judicial investigation. If it turns out that the rates are too low for that purpose, then they are illegal. Now, to impose upon a party interested the burden of obtaining a judicial decision of such a question (no prior hearing having ever been given) only upon the condition that if unsuccessful he must suffer imprisonment and pay fines as provided in these Acts, is, in effect, to close up all approaches to the courts, and thus

prevent any hearing upon the question whether the rates as provided by the Acts are not too low, and therefore invalid. The distinction is obvious between a case where the validity of the Act depends upon the existence of a fact which can be determined only after investigation of a very complicated and technical character, and the ordinary case of a statute requiring no such investigation and over which the jurisdiction of the legislature is complete in any event.

Enormous Fines—Invalidity of the Acts—Temporary Injunction. We hold, therefore, that the provisions of the Acts relating to the enforcement of the rates, either for freight or passengers, by imposing such enormous fines and possible imprisonment as a result of an unsuccessful effort to test the validity of the laws themselves, are unconstitutional on their face, without regard to the question of the insufficiency of those rates. We also hold that the Circuit Court had jurisdiction under the cases already cited (and it was therefore its duty) to inquire whether the rates permitted by these acts or orders were too low and therefore confiscatory, and if so held, that the court then had jurisdiction to permanently enjoin the railroad company from putting them in force, and that it also had power, while the inquiry was pending, to grant a temporary injunction to the same effect.

State Law Unconstitutional—Not a Suit Against a State. The general doctrine that the Circuit Court of the United States will restrain a state officer from executing an unconstitutional statute of the State, when to execute it would violate rights and privileges of the complainant which had been guaranteed by the Constitution, and would work irreparable damage and injury to him, has never been departed from. It is the settled doctrine of this court that a suit against individuals for the purpose of preventing them as officers of a State from enforcing an unconstitutional enactment to the injury of the rights of the plaintiff, is not a suit against the State within the meaning of that amendment. A State is not a party to a suit simply because the State Railroad Commission is such party.

Officers of a State May be Enjoined by a Federal Court. The various authorities we have referred to furnish ample justification for the assertion that individuals, who, as officers of the State, are clothed with some duty in regard to the enforcement of the laws of the State, and who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected, an unconstitutional act violating the Federal Con-

stitution, may be enjoined by a Federal court of equity from such action.

Enforcement of Unconstitutional Law by State Official, not Act of State. The act to be enforced is alleged to be unconstitutional, and if it be so, the use of the name of the State to enforce an unconstitutional act to the injury of complainants is a proceeding without the authority of, and one which does not affect, the State, in its sovereign or governmental capacity. It is simply an illegal act upon the part of a state official in attempting by the use of the name of the State to enforce a legislative enactment which is void because unconstitutional. If the act which the state attorney-general seeks to enforce be a violation of the Federal Constitution, the officer in proceeding under such enactment comes into conflict with that superior authority of the Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States. See *In re Ayres*, *supra*, p. 507. It would be an injury to complainant to harass it with a multiplicity of suits or litigation generally in an endeavor to enforce penalties under an unconstitutional enactment, and to prevent it ought to be within the jurisdiction of a court of equity. If the question of unconstitutionality with reference, at least, to the Federal Constitution, be first raised in a Federal court, that court, as we think is shown by the authorities cited hereafter, has the right to decide it to the exclusion of all other courts.

Jurisdiction to Enjoin Criminal Proceedings. It is further objected (and the objection really forms a part of the contention that the State cannot be sued), that a court of equity has no jurisdiction to enjoin criminal proceedings, by indictment or otherwise, under the state law. This, as a general rule, is true; but there are exceptions. When such indictment or proceeding is brought to enforce an alleged unconstitutional statute, which is the subject-matter of inquiry in a suit already pending in a Federal court, the latter court having first obtained jurisdiction over the subject-matter, has the right, in both civil and criminal cases, to hold and maintain such jurisdiction, to the exclusion of all other courts, until its duty is fully performed. *Prout v. Starr*, 188 U. S. 537, 542, 544. But the Federal court cannot, of course, interfere in a case where the proceedings were already pending in a state court. *Taylor v. Taintor*, 16 Wall. 366, 370; *Harkrader v. Wadley*, 172 U. S. 148.

Where one commences a criminal proceeding who is already party to a suit then pending in a court of equity, if the criminal proceedings are brought to enforce the same right that is in issue before that court, the latter may enjoin such criminal proceedings. *Davis &c. Co. v. Los Angeles*, 189 U. S. 207. In *In re Dobbins v. Los Angeles*, 195 U. S. 223, 241, it is remarked by Mr. Justice Day, in delivering the opinion of the court, that "it is well settled that where property rights will be destroyed, unlawful interference by criminal proceedings under a void law or ordinance may be reached and controlled by a court of equity." *Smythe v. Ames*, *supra*, distinctly enjoined the proceedings by indictment to compel obedience to the rate act.

Restraining Court Proceedings—Disobedience of Injunction. It is proper to add that the right to enjoin an individual, even though a state official, from commencing suits under circumstances already stated, does not include the power to restrain a court from acting in any case brought before it, either of a civil or criminal nature, nor does it include power to prevent any investigation or action by a grand jury. The latter body is a part of the machinery of a criminal court, and an injunction against a state court would be a violation of the whole scheme of our government. If an injunction against an individual is disobeyed, and he commences proceedings before a grand jury or in a court, such disobedience is personal only, and the court or jury can proceed without incurring any penalty on that account.

Injunctions Against Individuals and Against Court Proceedings. The difference between the power to enjoin an individual from doing certain things, and the power to enjoin courts from proceeding in their own way to exercise jurisdiction is plain, and no power to do the latter exists because of a power to do the former.

Remedy at Law Inadequate. All the objections to a remedy at law as being plainly inadequate are obviated by a suit in equity, making all who are directly interested parties to the suit, and enjoining the enforcement of the act until the decision of the court upon the legal question. *Ex parte Young*, 209 U. S. 123 (Minnesota Rate Case, decided March 23, 1908); *Hunter v. Wood*, 209 U. S. 205 (North Carolina Rate Case, decided March 23, 1908); *Perkins v. Northern Pac. Ry.*, 155 Fed. R. 445; *So. Ry. v. McNeill*, 155 Fed. R. 756; *Potlatch Lumber Co. v. S. F. & N. Ry.*, 157 Fed. R. 588.

Unjust Discrimination Defined and Forbidden

SEC. 2. That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Construction of Sec. 2. This section changes the common law which did not forbid discrimination in rates. *I. C. C. v. B. & O. Ry.*, 145 U. S. 263; *Lundquist v. Grand Trunk &c.*, 121 Fed. R. 915. Sec. 2 relates to discrimination in rates, but Sec. 3 is comprehensive enough standing alone to include every form of unjust discrimination, not only in rates, but also in the conveniences and facilities supplied to shippers in any of the details of the carrying service. *U. S. v. Delaware &c. Ry.*, 40 Fed. R. 101; *I. C. C. v. Western &c. Ry.*, 93 Fed. R. 83.

Validity of Existing Contracts for Transportation. As to the validity of existing contracts in contravention of terms of Act. *Fitzgerald v. Fitzgerald &c.*, 41 Neb. 376; 34 Amer. & Eng. R. Cas. 653; *Merchants' Cotton Press v. Insurance Co.*, 151 U. S. 368; *Church v. Minneapolis*, 14 S. Dak. 443; *Armour &c. v. United States*, 153 Fed. R. 1. See *Free Pass*.

Difference in the amount of traffic does not render service dissimilar. *U. S. v. Tozer*, 39 Fed. R. 369.

The purpose of Sec. 2 is to enforce equality between shippers over the same line, and to prohibit any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor. *I. C. C. v. Alabama &c.*, 168 U. S. 144; *Wight v. U. S.*, 167 U. S. 512; *U. S. v. Hanley*, 71 Fed. R. 673.

The phrase "under substantially similar circumstances and conditions," as used in the second section, refers to the matter of carriage, and does not include competition between rival routes, but

this language is restricted to the case of shippers over the same road, leaving no room for the operation of competition. (Cases cited above.) *Pittsburg Plate Glass Case*, 13 I. C. C. 87.

Round trip tickets at reduced rates do not constitute unjust discrimination. *I. C. C. v. B. & O. Ry.*, 145 U. S. 263.

There may be discrimination in storage, *American Warehousemen &c. v. I. C. R. R.*, 7 I. C. C. 556; *Wilson Produce Co. v. Penna. Ry.*, 14 I. C. C. 170; and in track storage charges, *New York Hay Ex. Asso. v. Penna. Ry.*, 14 I. C. C. 178; in the use of private cars and through interest in the connecting company, *Hutchinson Salt Case*, 10 I. C. C. 1; *Michigan Salt Case*, 10 I. C. C. 148; *Divisions of Joint Rates & Allowances to Terminal Railroads*, 10 I. C. C. 385. See *Annual Report, 1904*, p. 19. Exaction of unreasonable rent for private cars, *Rice &c. v. W. N. Y. & Pa. Ry.*, 4 I. C. C. 131. Rebates for the use of private cars, *Shamberg v. D. L. & W. Ry.*, 4 I. C. C. 630. Underbilling weight or false classification, *Proctor & Gamble Co. v. C. H. & D. Ry.*, 4 I. C. C. 87; *Proctor & Gamble Co. v. C., H. & D. Ry.*, 9 I. C. C. 440. Service of cars, *Gallogly & Firestone v. C., H. & D. Ry.*, 11 I. C. C. 1; *Hawkins v. L. S. & M. S. Ry.*, 9 I. C. C. 207. Granting a manufacturer's rate, *Alleged Unlawful Charges for Transportation of Coal by the L. & N. Ry.*, 5 I. C. C. 466. Unjust classification, *Coxe Bros. & Co. v. L. V. Ry.*, 4 I. C. C. 535.

A number of persons may travel together on a party rate ticket at reduced rates, but carriers cannot transport larger quantities of freight on the same principle. *Party Rate Case*, 145 U. S. 263; and see also 12 I. C. C. 95; *Providence Coal Co. v. P. & W. Ry.*, 1 I. C. C. 107; *U. S. v. Tozer*, 39 Fed. R. 369; *Judson on Int. Com.*, 192; *I. C. C. v. Alabama &c. Ry.*, 168 U. S. 165.

Not unjust when based on special service. *I. C. C. v. Detroit &c. Ry.*, 167 U. S. 633; *Loud v. S. C. Ry.*, 5 I. C. C. 529.

Carload and Less Than Carload Rates. *Thurber Case*, 3 I. C. C. 473; *St. Louis v. A., T. & S. F. Ry.*, 9 I. C. C. 318; *Buckeye Buggy Co. v. C., C. & St. L. Ry.*, 9 I. C. C. 620.

In assembling packages of goods and shipping them under carrier's rates for carload shipments, a shipper is not evading the law but is legally availing himself of the rates which the carrier offers.

The ownership of property tendered for shipment cannot be made a test as to the applicability of the carrier's rates. *California Commercial Asso. v. Wells, Fargo & Co.*, 14 I. C. C. 422; *Export Shipping Co. v. Wabash Ry.*, 14 I. C. C. 437.

Minimum Charge Upon any Single Shipment of Freight Should

Be for One Hundred Pounds. Wrigley, Jr., v. C., C. & St. L. Ry., 10 I. C. C. 412.

Use of Private Cars. Ruttle &c. v. Pere M. Ry., 13 I. C. C. 179.

Discriminations in Cargo or Trainload Rates. Paine v. L. V. Ry., 7 I. C. C. 218.

Carrier Cannot Discriminate in Favor of Itself. Haddock v. D., L. & W. Ry., 4 I. C. C. 296.

Stoppage in Transit Privileges. Mobile & Ohio Grain Rate Case, 9 I. C. C. 373; Transportation of Grain and Grain Products, 7 I. C. C. 240; Transportation of Cotton by K. C., M. & B. Ry., 8 I. C. C. 121; Cowan v. Bond, 39 Fed. R. 54; Central Yellow Pine Assn. v. V. S. & P. Ry., 10 I. C. C. 193; Quimby v. Maine Central Ry., 13 I. C. C. 246.

Abuse of the Stoppage in Transit Privileges. Transportation of Grain and Grain Products, 7 I. C. C. 240; C., R. I. & P. Ry. v. C. & A. Ry., 3 I. C. C. 450.

All Privileges Must be Published in Tariffs. Shiel & Co. v. I. C. Ry., 12 I. C. C. 210.

Separate Cars for White and Colored Persons. Segregation of white and colored persons is not discrimination, provided equal accommodations and conveniences are furnished. Georgia Edwards v. N. C. & St. L. Ry., 12 I. C. C. 247.

Discrimination in passenger service is prohibited, but this does not prohibit separate cars for white and colored passengers where they have accommodations equal in all respects. Heard v. Ga. Ry., 1 I. C. C. 428; Georgia Edwards v. N. C. & St. L. Ry., 12 I. C. C. 247.

Parlor Car Rates. Hewins v. N. Y., N. H. & H. Ry., 10 I. C. C. 221; and to pay extra fare by passengers without tickets not discrimination, Sidman v. R. & D. Ry., 3 I. C. C. 512.

Parcel Express. Walker v. B. & O. Ry., 12 I. C. C. 196.

A Like Kind of Traffic means a kind that is capable of a fair and just classification and not necessarily identical. New York Board of Trade &c. v. Pa. R. R., 4 I. C. C. 447.

The reservation applicable to a single business by the initial carrier guaranteeing a through rate, or the right to route goods beyond its own terminal, does not amount to an unlawful discrimination, if the business is of a special nature, like the fruit business, having nothing in common with other freight. So. Pac. Co. v. I. C. C., 200 U. S. 536.

Bills of Lading are not vitiated by the interstate commerce law. Merchants' Cotton Press v. Insurance Co., 151 U. S. 368.

Substantially Similar Circumstances and Conditions. The car-

rier must determine in the first instance whether or not the conditions are so substantially similar as to preclude a difference in rates, *I. C. C. v. Alabama*, 168 U. S. 169; and this determination is subject to revision by the Commission and the courts. *L. & N. Ry. v. Behlmer*, 175 U. S. 648.

A company may accept less for through shipments than they do for local shipments over the same route. *Thatcher v. D. & H. Co.*, 1 I. C. C. 152. Rates will not be declared unreasonable and unlawful under the first section of the Act without other testimony than that afforded by comparison. *Raymond v. C., M. & St. P. R. R.*, 1 I. C. C. 230. Carriers are not, as a matter of law, prohibited from making rates from points in foreign countries to points in the United States, of which the inland division or share accruing to carriers within the United States is less than the tariff rate of such carriers on domestic shipments of similar commodities. *Kemble v. B. & O. R. R.*, 8 I. C. C. 110; *Texas &c. v. I. C. C.*, 162 U. S. 197.

The Supreme Court has decided that: "The Commission must take into consideration all of the facts of a given case—among which are to be considered the welfare and advantage of the common carrier, and of the great body of citizens of the United States who constitute the consumers and recipients of the merchandise carried; and that the attention of the Commission is not to be confined to the advantage of shippers and merchants who deal at or near the ports of the United States, in articles of domestic production. Undoubtedly the latter are likewise to be considered, but we cannot concede that the Commission is shut up by the terms of this Act to solely regard the complaints of one class of the community. We think the Congress has here pointed out that in considering questions of this sort, the Commission is not only to consider the wishes and interests of the shippers and merchants of large cities, but to consider also the desire and advantage of the carriers in securing special forms of traffic, and the interest of the public that the carriers should secure that traffic, rather than abandon it, or not attempt to secure it. It is self-evident that many cases may and do arise where, although the object of the carriers is to secure the traffic for their own purposes and upon their own lines, yet, nevertheless, the very fact that they seek, by the charges they make, to secure it, operates in the interest of the public. . . . That all circumstances and conditions which reasonable men would regard as affecting the welfare of the carrying companies, and of the producers, shippers and consumers, should be considered by a tribunal appointed to carry into effect and enforce the provisions

of the Act . . . to deprive the inland consumers of the advantage of through rates, and thus to give an advantage to the traders and manufacturers of the large seaboard cities, seems to create the very mischief which it was one of the objects of the Act to remedy." *Tex. & Pac. Ry. v. I. C. C.*, 162 U. S. 197; *Pittsburg Plate Glass Case*, 13 I. C. C. 87.

"A discrimination springing alone from a disparity in rates cannot be held, in legal effect, to be the voluntary act of the defendant carriers, and as a consequence the provisions of the third section of the Act forbidding the making or giving of an undue or unreasonable preference or advantage will not apply. The prohibition of the third section when that section is considered in its proper relation, is directed against unjust discrimination or undue preference arising from the voluntary and wrongful act of the carriers complained of as having given undue preference and does not relate to acts the result of conditions wholly beyond the control of such carriers." *East Tenn. &c. v. I. C. C.*, 181 U. S. 1.

While competition between carriers cannot justify discrimination between individuals, competition may and does have an influence in determining the through rates, thus making them under essentially different circumstances and conditions from the local rates to other points on the same line. In such cases the reduced rate affected by competition is controlled by circumstances and conditions substantially dissimilar within the meaning of the Act. But whether so controlled or not, it must be the same to all shippers under the same conditions. It has been uniformly held both by the Commission and the courts, that a local rate to a given point and the *pro rata* part of a through rate to the same point on the same line, are not under similar circumstances and conditions.

The phrase "under similar circumstances and conditions" is found in Secs. 2 and 4. As hereafter seen competitive conditions may create dissimilar circumstances and conditions between localities under Sec. 4, but when the rates are thus fixed under dissimilar conditions, Sec. 2 requires that shippers in any given locality must be treated alike for the same service. But through traffic is a different "kind of service" from local traffic. *Union Pac. Ry. v. U. S.*, 117 U. S. 355; *Import Rate Case*, 162 U. S. 197. It is not only in the presence of competition, but also in the increased cost of service, resulting from stoppages, that the conditions of through and local traffic are substantially dissimilar. *Chicago Ry. Co. v. Tompkins*, 176 U. S. 167.

These words as used in Sec. 2 refer to the matter of carriage, and

do not include competition, that is, discrimination between individuals is not justified by the fact of competition with other carriers influencing the lower charges. *Wight v. U. S.*, 167 U. S. 512; *Capital Gas Co. v. R. R. Co.*, 11 I. C. C. 104.

Public not a General Manager—No Presumption of Wrong from a Change of Rates. It must be remembered that railroads are the private property of the owners; that while from the public character of the work in which they are engaged the public has the power to prescribe rules for securing faithful and efficient service and equality between shippers and communities, yet in no proper sense is the public a general manager.

Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate so as to give undue preference or disadvantage to persons or traffic similarly circumstanced, the Act to regulate commerce leaves common carriers, as they were at the common law, free to make special rates looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce and of their own situation and relation to it, and generally to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits.

It must also be remembered that there is no presumption of wrong arising from a change of rate by a carrier. The presumption of honest intent and right conduct attends the action of carriers as well as it does the action of other corporations or individuals in their transactions in life. Undoubtedly when rates are changed the carrier making the change must, when properly called upon, be able to give a good reason therefor, but the mere fact that a rate has been raised carries with it no presumption that it was not rightfully done. Those presumptions of good faith and integrity which have been recognized for ages as attending human action, have not been overthrown by any legislation in respect to common carriers.

The rule is not universal that the rates on raw material shall not be higher than on the manufactured product. *I. C. C. v. Chicago Great Western Ry.*, 209 U. S. 108 (*Packing House Products Case*, decided March 23, 1908).

Undue or Unreasonable Preference or Advantage Forbidden

SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Facilities for Interchange of Traffic—Discrimination Between Connecting Lines Forbidden

Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

Construction of Act. This section was taken substantially from the English Traffic Act, and the construction of that Act by the English courts may be regarded as incorporated in the Act. *Texas &c. Ry. v. I. C. C.*, 162 U. S. 197; *I. C. C. v. B. & O. Ry.*, 145 U. S. 284; *McDonald v. Hovey*, 110 U. S. 619.

Question of fact and not of law, depending on the matters proved in each case. *I. C. C. v. Alabama Ry.*, 168 U. S. 170; *Cincinnati &c. Ry. v. I. C. C.*, 162 U. S. 184, 197.

The question cannot be determined by a mere mathematical calculation. *I. C. C. v. Louisville &c. Ry.*, 73 Fed. R. 409; *I. C. C. v. Alabama &c.*, 168 U. S. 144.

The nature and extent of competition must be considered. *I. C. C. v. Western Ry.*, 93 Fed. R. 83; *I. C. C. v. Alabama &c. Ry.*, 168 U. S. 170; *I. C. C. v. Southern Ry.*, 105 Fed. R. 704; *I. C. C. v. Southern Ry.*, 117 Fed. R. 741; potential water competition, *I. C. C. v. Alabama &c.*, 74 Fed. R. 715.

Cartage in connection with business of carrier. *Detroit &c. v. I. C. C.*, 74 Fed. R. 813; *Detroit &c. v. I. C. C.*, 167 U. S. 644.

Switching Facilities and Service. *Interstate Stockyard v. Indianapolis &c. Ry.*, 99 Fed. R. 473.

In case of car shortage, railroad must *pro rata* supply on hand among all shippers. *U. S. v. Norfolk*, 109 Fed. R. 831.

As to private cars specially adapted for certain sort of traffic. *U. S. v. Delaware*, 40 Fed. R. 101.

Permitting shipper to use his own cars. *U. S. v. Norfolk &c.*, 109 Fed. R. 831; *Ruttle et als. v. Pere M. Ry.*, 13 I. C. C. 179.

As to delivery of cattle at stock yard. *Central Stock Yards v. L. & N. R. R.*, 118 Fed. R. 113.

The prohibition of the third section was directed against unjust discrimination or undue preferences arising from the voluntary or wrongful act of the carriers complained of, and does not relate to acts the result of conditions wholly beyond the control of such carriers. Where the competition was controlling, the preference was not undue or the discrimination unjust. There might be a case where the carrier could not be allowed to avail himself of the competitive condition. Thus, if he could not meet the competitive rate without transporting the merchandise at less than the cost of transportation, and therefore bringing about a deficiency which would increase charges upon other business, the engaging in such competitive traffic would bring about an unjust discrimination and a disregard of the public interest. *East Tennessee, Virginia & Georgia R. R. v. I. C. C.*, 181 U. S. 1.

Competition is a factor to be considered. *I. C. C. v. Western &c.*, 93 Fed. R. 83; *I. C. C. v. L. & N. R. R.*, 73 Fed. R. 409; *Brewer v. Central &c.*, 84 Fed. R. 257; *I. C. C. v. Western &c.*, 88 Fed. R. 186; *I. C. C. v. Cincinnati &c. Ry.*, 124 Fed. R. 624; *I. C. C. v. L. & N. R. R.*, 190 U. S. 273; *Pratt Lumber Co. v. C. I. & L. Ry. Co.*, 10 I. C. C. 29; *Gardner & Clark v. So. Ry.*, 10 I. C. C. 342; *I. C. C. v. Alabama &c.*, 168 U. S. 144; *Texas &c. v. I. C. C.*, 162 U. S. 197; *East Tenn. &c. v. I. C. C.*, 181 U. S. 1; *Pittsburg Plate Glass Case*, 13 I. C. C. 87.

Qualifications in the application of the competition rule. *Judson on Interstate Commerce*, Sec. 183.

Discrimination between domestic and foreign traffic in import and export rates is not unjust preference.

The purpose of Congress was to facilitate and promote commerce and not to reinforce the provisions of the tariff laws. It is not a violation of the Act for the carrier to make a lower rate to the point of export or from the port of import upon the traffic which is exported or imported than upon that which is locally consumed.

Texas &c. v. I. C. C., 162 U. S. 197; see Export and Domestic Traffic in Grain, 8 I. C. C. 214; Railroad Com. of Kansas v. A., T. & S. F. Ry., 8 I. C. C. 304; Pittsburg Plate Glass Case, 13 I. C. C. 87.

As to rates from intermediate points. Wichita v. A., T. & S. F. Ry., 9 I. C. C. 534.

Classification. C., H. & D. R. R. v. I. C. C., 206 U. S. 142; Stowe-Fuller Co. v. Pa. Co., 12 I. C. C. 215; Anthony Salt Co. v. U. P. Ry., 5 I. C. C. 299; Judson on Interstate Commerce, Sec. 208.

Basing Points, upheld. I. C. C. v. L. & N. Ry., 190 U. S. 273.

Natural Advantages of Location. Michigan Salt Case, 10 I. C. C. 148; Holdzkom v. M. C. Ry., 9 I. C. C. 42; Daniels v. C., R. I. & P. Ry., 6 I. C. C. 458; Enterprise Mfg. Co. v. Ga. R. R., 12 I. C. C. 451; Quimby v. Maine Central Ry., 13 I. C. C. 246; Payne-Gardner Co. v. L. & N. Ry., 13 I. C. C. 638.

Differentials Between Grain and Grain Products. R. R. Com. of Kansas v. A., T. & S. F. Ry., 8 I. C. C. 304; Wichita v. M. P. Ry., 10 I. C. C. 35.

Differentials Between Competitive Cities. Judson on Interstate Commerce, Sec. 186.

Exclusive Use of Leased Cars. R. R. Com. of Ohio v. Hocking Valley Ry., 12 I. C. C. 398; Farmers v. N. E. of S. C. Ry., 6 I. C. C. 295; Independent Refiners &c. v. W. N. Y. & P. Ry., 5 I. C. C. 415.

Group or Blanket Rates, sustained when approximately the same distance from shipping center. Judson on Interstate Commerce, Sec. 182; Rhinelander Paper Co. v. No. Pac. Ry., 13 I. C. C. 633; Phillips &c. v. So. Pac. Co., 13 I. C. C. 644.

Preference in Car Service. West Va. &c. v. U. S., 134 Fed. R. 198; West Va. &c. v. U. S., 125 Fed. R. 252; Parks v. Cincinnati &c. R. R., 10 I. C. C. 47; Goode Coal Company v. B. & O. Ry., 10 I. C. C. 226.

Distribution of Cars. U. S. v. West Va. N. Ry., 125 Fed. R. 253; West Va. &c. v. U. S., 134 Fed. R. 198; R. R. Com. of Ohio v. Hocking Valley Ry., 12 I. C. C. 398; Pitcairn Coal Co. v. B. & O. Ry., 154 Fed. R. 108, 497; Powhatan Coal Co. v. N. & W. Ry., 13 I. C. C. 69; Royal Coal & Coke Co. v. So. Ry., 13 I. C. C. 440; Traer, Receiver, v. C. & A. Ry., 13 I. C. C. 451; Rail and River Coal Co. v. B. & O. Ry., 14 I. C. C. 86.

Sec. 2 assures to shippers an equality of rates for the transportation of property under substantially similar circumstances and conditions, and Sec. 3 assures to them an equality in the opportunity

to use the rates, facilities and services of carriers. One right supplements the other.

The power to deal with undue preferences and unlawful discriminations, when accomplished by carriers through unjust regulations and practices, does not rest upon implication. The language of Sec. 15 is entirely sufficient in itself to enable the Commission to redress wrongs of unfair car distribution.

Any practice or regulation that unlawfully discriminates against one shipper and affords an undue preference to another shipper is a regulation or practice *affecting rates* in the sense in which that phrase is used in the amended act.

The maximum or minimum weight of a carload is not something affecting the rate, but is in fact a part of the rate, a factor which is just as essential to a correct statement of the rate as is the rate per hundred pounds itself.

Ample authority is vested in the Commission by Sec. 15 to deal with the undue preferences and unlawful discriminations forbidden under Secs. 2 and 3 and elsewhere in the Act, regardless of the form of the rule, regulation or practice under which such wrongs may be perpetrated.

Sec. 15 of the Act is to be read in the widest possible sense, and it brings within the jurisdiction of the Commission all the regulations and practices of carriers under which they offer their services to the shipping public, and conduct their transportation.

A carrier, during percentage periods, may not assign the private cars to operators other than their owners, nor foreign railway fuel cars to any mines except those to which they have been manifested by the foreign line; it must nevertheless count all such cars against the distributive share of the respective mines to which the private cars belong or the foreign railway fuel cars have been consigned; and in case the private cars or foreign railway fuel cars so delivered to a mine do not fill out its distributive share of available cars, enough system cars are to be added to make up its share according to its rating.

The obvious relation between shortage in cars and an insufficiency in motive power, in sidings, in tracks, in train crews, and other facilities necessary to the movement of traffic, must be noticed.

A shortage of cars on a particular line does not mean that the supply of cars of that carrier has been diminished in number, but only that the volume of traffic offered exceeds the capacity of its available equipment to move it.

The ownership of a private car gives to the owner no superior

right to use the facilities of the carrier in transporting it; it gives him no right to have his private car attached to a locomotive in preference to a system car loaded by another shipper.

When the general facilities are insufficient to move all the traffic offered, no operator has a superior right over another merely because he enjoys the advantage of owning private cars or has fuel contracts with connecting lines.

The right of a carrier to make arbitrary allowances of system cars without regard to their percentage rating for the purpose of enabling the owner of a mine reasonably to develop it, so as to put in a condition to operate and make shipments, has been recognized, and we see no grounds for disturbing the right in this case. But any arbitrary allowance of cars made to an operator on other grounds should be closely scrutinized, and is an unlawful discrimination unless justified by special conditions. *Rail and River Coal Co. v. B. & O. Ry.*, 14 I. C. C. 86.

Track Storage Charges. Discrimination is not necessarily unlawful; it may be forced upon the carrier by controlling circumstances. In such a case the law is not infringed, and such discrimination is not unlawful unless made in the interest of a competing locality or commodity. *Wilson Produce Co. v. Penna. Ry.*, 14 I. C. C. 170.

Different Rates from Same Coal District. Small-vein coal and big-vein coal come from the same field and in several instances from the same mine, being loaded at the same tippie. Every incident of the transportation is the same and the two varieties of coal are so similar in appearance as to be indistinguishable except by experts. There is, however, a difference in the quality of the two coals, and the small-vein coal cannot compete with the big-vein in the markets at the same rate of freight. It is the right of the small-vein operators to have a rate that will enable them to move their output to the consuming markets and give them a reasonable opportunity to compete with similar coal from adjacent fields. *George's Creek Basin Coal Co. v. B. & O. Ry.*, 14 I. C. C. 127.

Facilities for Interchange of Traffic. In determining what are reasonable and proper facilities, the interests of the road required to furnish them must be considered. *Oregon &c. Ry. v. Northern &c. Ry.*, 61 Fed. R. 158; *U. S. v. Morris*, 40 Fed. R. 101; *Little Rock v. St. Louis &c.*, 63 Fed. R. 775; *Atchison &c. v. Denver &c.*, 110 U. S. 667; *Central &c. v. L. & N. Ry.*, 192 U. S. 568; *Allen & Lewis v. Oregon &c.*, 98 Fed. R. 16; *Capehart v. L. & N. Ry.*, 4 I. C. C. 265.

Whether a violation of the statute for a carrier to allow a connect-

ing carrier the use of its tracks or terminal facilities and to refuse to allow a similar use by other connecting carriers. *Oregon v. Northern &c.*, 51 Fed. R. 475; *St. Louis &c. v. L. & N. R. R.*, 65 Fed. R. 39; *Little Rock &c. v. St. Louis &c.*, 63 Fed. R. 775.

A carrier is not required to transport traffic in the cars of other companies where it has cars of its own equally available for the purpose. *Oregon v. &c. Northern &c.*, 51 Fed. R. 465; *Little Rock &c. v. St. Louis*, 59 Fed. R. 407; *Little Rock &c. v. St. Louis*, 63 Fed. R. 775.

Weighing and Reweighing, cars and commodities. *Rice v. Georgia Ry.*, 14 I. C. C. 75.

Non-transferable Round Trip Tickets. Carrier has right to sell at reduced rates, and the condition of non-transferability and forfeiture embodied in such tickets is binding not only upon the original purchaser, but upon anyone who has acquired such a ticket and attempted to use the same in violation of its terms. It is the duty of the carrier to use due diligence to prevent the use of such tickets by other than the original purchaser.

An actionable wrong is committed by one "who maliciously interferes in a contract between two parties and induces one of them to break that contract to the injury of the other." It is not necessary that actual malice in the sense of personal ill will should exist, but only the wanton disregard of the rights of the carrier causing injury to it. An injunction may issue which restrains for the future the commission of acts identical in character with those which have been the subject of controversy and which have been adjudged illegal. *Bitterman v. Lou. & Nash. Ry.*, 207 U. S. 205.

A common carrier has a right to conduct its own business according to law, free from the interference of strangers.

A common carrier may make rules for its conduct, fixing the times, the places, the methods, and the forms in which it will receive commodities it offers to transport, and these rules are presumptively reasonable and just.

Courts and Commissions should not interfere to modify established rules of transportation companies on account of trivial troubles and incidental inconveniences. *Platt v. Le Cocq*, 158 Fed. R. 723.

Long and Short Haul Provision—Commission has Authority to Relieve Carriers from the Operation of This Section

SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Commission appointed under the provisions of this Act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this Act.

This section only prohibits a greater charge for a shorter than for a longer haul. An equal charge does not violate this section of the statute, and is not illegal unless it amounts to an unjust discrimination, or an undue preference or advantage within the prohibition of the second or third sections of the Act. *I. C. C. v. Brimson*, 154 U. S. 447; *Texas &c. v. I. C. C.*, 162 U. S. 197.

A combination of carriers for through transportation constitutes a new "line" which is independent of the component lines, and hence the charges made by the through line do not constitute violation of the statute by the local and component lines and *vice versa*. *I. C. C. v. Cincinnati Ry.*, 56 Fed. R. 937; *Chicago &c. v. Osborne*, 52 Fed. R. 912; *Social Circle Case*, 162 U. S. 184.

Where the circumstances and conditions are substantially dissimilar, a carrier may make a greater charge for a shorter than a longer haul without first applying to the Commission for authority to do so. But in such cases the carrier acts at his peril, and if the circumstances are not substantially different, the charge is illegal. *Louisville &c. v. Behlmer*, 175 U. S. 648; *East Tenn. &c. v. I. C. C.*, 181 U. S. 1; *I. C. C. v. Alabama Midland &c.*, 168 U. S. 144; *Brewer v. Central &c.*, 84 Fed. R. 258; *Behlmer v. L. & N.*, 71 Fed. R. 835; *I. C. C. v. East Tenn. &c.*, 85 Fed. R. 107; *Detroit &c. v. I. C. C.*, 74 Fed. R. 803; *I. C. C. v. Western &c.*, 88 Fed. R. 186.

Under Substantially Similar Circumstances and Conditions. The Supreme Court of the United States has established the rule which has been adhered to in a series of decisions, that competition of any kind, that is, whether from railroads subject to the Act or not, was one of the most obvious and effective circumstances that made the conditions which its long and short haul clause would provide substantially dissimilar, and as such must have been in the contemplation of Congress in the passage of the Act, and that such competition when controlling, justified the carrier in making a lower rate for the longer haul, not as a matter of grace or favor from the Commission, but as a matter of right. *Import Rate Case*, 162 U. S. 197; *I. C. C. v. Alabama &c.*, 168 U. S. 144; *L. & N. v. Behlmer*, 175 U. S. 648; *East Tenn. &c. v. I. C. C.*, 181 U. S. 1; *I. C. C. v. L. & N. Ry.*, 190 U. S. 273; *Calloway v. L. & N. Ry. et al.*, 7 I. C. C. 431; *Phillips, Bailey & Co. v. L. & N. Ry. Co. et al.*, 8 I. C. C. 93; *Holdzkom v. M. C. Ry. Co. et al.*, 9 I. C. C. 42; *Pittsburg Plate Glass Case*, 13 I. C. C. 87; *Randolph Lumber Co. v. Seaboard Air Line Ry.*, 13 I. C. C. 601.

The Commission has held that the existence of actual competition which is of controlling force, in respect to traffic important in amount, may make out dissimilar circumstances and conditions entitling the carrier to charge less, e. g., when competition is with foreign or other railroads which are not subject to the provisions of the statute, or in rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition. *Application for Suspension of Fourth Section*, 7 I. C. C. 593; *Wichita v. A., T. & S. F. Ry. Co. et al.*, 9 I. C. C. 534; *Goodhue v. C. G. W. Ry. Co.*, 11 I. C. C. 683.

Among the circumstances and conditions, competition that affects rates should be considered, and in deciding whether charges made at a low rate to secure foreign freights which would otherwise go by other competitive routes are or are not undue and unjust, the fair interest of the carrier companies and the welfare of the community which is to receive and consume the commodities are to be considered.

The mere fact that the disparity between the through and the local rates was considerable did not, of itself, warrant the court in finding that such disparity constituted an undue discrimination; much less did it justify the court in finding that the entire difference between the two rates was undue or unreasonable. *Texas & Pac. Ry. Co. v. I. C. C.*, 162 U. S. 197; *Pittsburg Plate Glass Case*, 13 I. C. C. 87.

It has been settled by this court that competition which is control-

ling on traffic and rates, produces in and of itself the dissimilarity of circumstances and conditions described in the statute, and that where this condition exists a carrier has the right of his own motion to take it into view in fixing rates to competitive points. *East Tenn., Va. & Ga. Ry. Co. v. I. C. C.*, 181 U. S. 1; *Texas &c. v. I. C. C.*, 162 U. S. 197; *I. C. C. v. Alabama*, 168 U. S. 164; *L. & N v. Behlmer*, 175 U. S. 648.

Competition which is real and substantial and exercises a potential influence on rates to a particular point, brings into play the dissimilarity of circumstances and conditions provided by the statute. *East Tenn. &c. v. I. C. C.*, 181 U. S. 1; *Pittsburg Plate Glass Case*, 13 I. C. C. 87; *Phillips &c. v. So. Pac. Co.*, 13 I. C. C. 644.

Dissimilar circumstances which justify a greater charge for a shorter than for a longer haul under Sec. 4 will also prevent such rate from constituting an illegal preference or advantage under Sec. 3. *Gump v. B. & O. Ry.*, 14 I. C. C. 105.

Pooling of Freights and Division of Earnings Forbidden

SEC. 5. That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

Construction of Section, and Pooling Defined. In re Pooling Freights, 115 Fed. R. 588; Cincinnati v. C., N. O. & T. P. Ry. Co. et al., 6 I. C. C. 195; Consolidated Forwarding Co. v. S. P. Ry. Co. et al., 9 I. C. C. 182; I. C. C. v. S. P. Co., 132 Fed. R. 829; So. Pac. Co. v. I. C. C., 200 U. S. 536.

Agreements not within the Prohibition. An agreement for the division of through freights between the members of a trunk line, nor for consultation for the promotion of reasonable rates. Duncan v. A., T. & S. F. Ry. Co. et al., 6 I. C. C. 85; Immigrant Case, 10 I. C. C. 13. For other cases not within the Anti-trust Act of 1890, see Judson on Interstate Commerce, Sec. 324; Warren Mfg. Co. v. So. Ry. Co., 12 I. C. C. 381.

Agreements must be made with carriers subject to the provisions of the Act. Independent Refiners &c. v. W. N. Y. & P. Ry. Co., 5 I. C. C. 415; In re Express Companies, 1 I. C. C. 349; see U. S. v. Trans-Missouri Freight Association, 166 U. S. 290; Joint Traffic Association Case, 171 U. S. 505; Tift v. So. Ry., 138 Fed. R. 735.

Where there is a conflict in the state and Federal law in respect to imposing a penalty for violation, the state law must yield. Gulf &c. Ry. Co. v. Hefley, 158 U. S. 98.

The agreement for the division of traffic need not necessarily be reduced to writing in order to constitute an offense. In re Pooling Freights, 115 Fed. R. 590; Joint Traffic Association Case, 171 U. S. 505.

Printing and Posting of Schedules of Rates, Fares and Charges, Including Rules and Regulations Affecting the Same, Icing, Storage and Terminal Charges, and Freight Classifications

SEC. 6. (*Amended March 2, 1889. Following section substituted June 29, 1906.*) That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection, as aforesaid, the separately established rates, fares, and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act.

Printing and Posting of Schedules of Rates on Freight Carried Through a Foreign Country—Freight Subject to Customs Duties in Case of Failure to Publish Through Rates

Any common carrier subject to the provisions of this Act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States

the through rate on which shall not have been made public, as required by this Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.

Thirty Days' Public Notice of Change in Rates Must be Given—Commission May Modify Requirements of This Section

No change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: *Provided*, That the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

Joint Tariffs Must Specify Names of Carriers Participating—Evidence of Concurrence

The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.

Copies of Contracts, Agreements, or Arrangements Relating to Traffic Must be Filed with Commission

Every common carrier subject to this Act shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party.

Commission May Prescribe Forms of Schedules

The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged and may change the form from time to time as shall be found expedient.

No Carrier Shall Engage in Transportation Unless it Files and Publishes Rates, Fares, and Charges Thereon—Published Rates not to be Deviated From—“Carrier” Means “Common Carrier”

No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of passengers or property, as defined in this Act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs: *Provided*, That wherever the word “carrier” occurs in this Act it shall be held to mean “common carrier.”

Preference and Expedition of Military Traffic in Time of War

That in time of war or threatened war preference and precedence shall, upon the demand of the President of the United States, be given, over all other traffic, to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic.

Contracts for Less Than Regular Rates. A contract limiting the carrier's liability in consideration of a special rate less than the regular rate is void and constitutes no defense to an action for the value of goods lost or damaged in transit. *Ward v. Mo. Pac. Ry.*, 158 Mo. 226.

It is the duty of the carrier to apply the rate as published, and where it appears in the complaint before the Commission that a contract was made for a lower charge than published, the contract is not binding, and its violation furnishes no ground for redress under the Act. *Red Cloud Mining Co. v. So. Pac. Co.*, 9 I. C. C. 216; *Pond-Deck v. Spencer*, 86 Fed. R. 846; *M. & O. v. Dismukes*, 94 Ala. 131; *Graves v. Waite*, 14 N. Y. 162.

As to cartage, storage and terminal charges being included in the schedules. *American Warehousemen &c. v. I. C. Ry.*, 7 I. C. C. 592; *Pa. Millers &c. v. P. & R. Ry.*, 8 I. C. C. 560; *Blackman v. So. Ry.*, 10 I. C. C. 352; *Carr v. N. P. Ry.*, 9 I. C. C. 1; *I. C. C. v. Chicago &c.*, 186 U. S. 320; *I. C. C. v. Chicago &c.*, 103 Fed. R. 249.

Tariff takes effect though not posted in freight depots. *Texas &c. Ry. v. Cisco &c.*, 204 U. S. 449; *Pueblo Trans. Asso. v. So. Pac. Co.*, 14 I. C. C. 82.

Published Joint Rates. "The only rates which a carrier is authorized to publish are its own local rates, that is, to points on its own line, and such through rates as it is authorized by agreement with any connecting carrier to combine with the rates of such carrier to points on its own line. Joint rates can only be made by concurrence or assent. There must be lawful rates upon each of the roads before there can be lawful combination of rates. *N. Y., N. H. & H. R. Co. v. Platt, Receiver, &c.*, 7 I. C. C. 323. See Sec. 15 of amended Act, June 29, 1906, which empowers the Commission to establish through routes and joint rates.

Tariff of Rates for Export and Import Commerce. The Commission has held in a number of cases that the export and import rates should be published. *New York Produce Exchange v. N. Y. C. & H. R. R. Co. et al.*, 3 I. C. C. 137; *New Orleans Cotton Exchange v. C., N. O. & T. P. Ry.*, 4 I. C. C. 694; *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co.*, 13 I. C. C. 266.

The carrier must publish either the joint rates to the foreign destination or a local rate to the point of export. *Kemble v. B. & O. Ry.*, 8 I. C. C. 110; *Export and Domestic Traffic in Grain*, 8 I. C. C. 214; *Publication and Filing of Tariffs on Exports and Imports*, 10 I. C. C. 55.

Through Routes and Joint Rates, 12 I. C. C. 163, Commission may establish, see Sec. 15, Act June 29, 1906. *Pacific Coast Lumber &c. v. No. Pac. Ry.*, 14 I. C. C. 51; *E. Martin v. C., B. & Q. R. R. &c.*, 2 I. C. C. 31; *Social Circle Case*, 162 U. S. 184; *Railroad Commission v. Clyde Steamship Co. et al.*, 5 I. C. C. 391; *Montg. Freight Bureau v. W. Ry. of Ala.*, 14 I. C. C. 150; *Loup Creek Colliery Case*, 12 I. C. C. 471; *Cattle Raisers' Asso. of Texas v. Ry. Co.*, 13 I. C. C. 21; *Stedman & Son v. C. & N. Ry. Co.*, 13 I. C. C. 167; *Gentry v. A., T. & S. F. Ry. Co.*, 13 I. C. C. 171; *Cardiff Coal Co. v. C., M. & St. P. Ry.*, 13 I. C. C. 460.

Through rate should be less than the sum of the locals. *Randolph Lumber Co. v. S. A. L. Ry.*, 14 I. C. C. 338.

Definition of, *E. Martin v. C., B. & Q. R. R. &c.*, 2 I. C. C. 31; *Social Circle Case*, 162 U. S. 184; *Cincinnati &c. Ry. Co. v. I. C. C.*, 162 U. S. 184; *R. R. Com. v. Clyde S. S. Co. et al.*, 5 I. C. C. 391; method of determining violations of Act, *St. L. & S. F. Ry.*, 8 I. C. C. 301; *L. & N. v. Behlmer*, 175 U. S. 650; *Milwaukee v. F. & P. M. Ry.*, 2 I. C. C. 553; *Through Routes and Joint Rates*, 12 I. C. C. 163.

Reasonableness of a joint through rate. *Gump v. B. & O. Ry.*, 14 I. C. C. 105.

Must File Tariffs. *U. S. v. New York Central &c.*, 153 Fed. R. 630.

Tariffs Cannot Have Retroactive Effect. Through Routes and Joint Rates, 12 I. C. C. 163.

All Privileges Must Be Published in Tariffs. *Shiel & Co. v. I. C. Ry.*, 12 I. C. C. 210; *La Salle &c. v. Chicago & N. W. Ry.*, 13 I. C. C. 610.

The published rate between two given points, so long as it remains uncanceled, is as fixed and unalterable, either by the shipper or by the carrier, as if that particular rate had been established by a special Act of Congress. When regularly published it is no longer the rate imposed by the carrier, but the rate imposed by law. Shippers cannot have benefit of a lower rate when quoted by mistake. The published rate must be paid by the shipper and he cannot impute negligence to carriers in quoting rates. *A. J. Poor Grain Co. v. Ry. Co.*, 12 I. C. C. 418; *Armour &c. v. United States*, 208 U. S. (decided March 16, 1908).

A carrier cannot put in prohibitive rates on any commodity on the ground that it is not desirable traffic for that carrier. *A. J. Poor Grain Co. v. Ry. Co.*, 12 I. C. C. 418.

Contracts and tariffs filed with the Commission may be considered by it, though not introduced in evidence. *Boston Fruit & Produce Exchange*, 4 I. C. C. 664.

There Can Be but One Legal Rate Between Two Points. This rate must be either (a) the local rate if over one road, or (b) the joint rate if over a through route composed of two or more roads which have agreed as to a joint rate, or (c) a combination of separately established rates applicable on through business over a through route which does not enjoy a joint rate. *Laning-Harris Coal & Grain Co. v. M. P. Ry. Co. et als.*, 13 I. C. C. 154; *Hydraulic Press Brick Co. v. St. L. & S. F. Ry.*, 13 I. C. C. 342.

Continuous Carriage of Freights from Place of Shipment to Place of Destination

SEC. 7. That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this Act.

A carrier cannot escape liability by breaking haul and calling itself a separate carrier. *Parkhurst v. Penna. Ry. Co.*, 2 I. C. C. 131; *Investigation of Grand Trunk Ry. of Canada*, 3 I. C. C. 89.

Should be construed with Sec. 3, which provides for connecting lines and interchange of traffic. *Kentucky v. L. & N. Ry.*, 37 Fed. R. 567.

As to what constitutes continuous shipment. See *Cutting v. Florida Ry. Co.*, 46 Fed. R. 641; *The Daniel Ball*, 77 U. S. 557.

Liability of Common Carriers for Damages

SEC. 8. That in case any common carrier subject to the provisions of this Act shall do, cause to be done, or permit to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any Act, matter, or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

Merely making or offering an illegal rate when it is not shown that an actual shipment was made, constitutes no legal injury to a shipper who was charged a higher rate. *Parsons v. C. & N. W. Ry. Co.*, 167 U. S. 447; *Lehigh Valley Ry. Co. v. Rainey*, 112 Fed. R. 487.

Measure of Damages. *Junod v. Chicago*, 47 Fed. R. 290.

Limitation of Actions. See Sec. 16.

Claims for Damages are Assignable. *Edmunds v. Ill. Cent. Ry. Co.*, 80 Fed. R. 78.

Jurisdiction of Actions for Damages. *Judson on Interstate Commerce*, Secs. 248, 249.

The Federal courts have exclusive jurisdiction over causes arising under the Interstate Commerce Act. *Van Patten v. Chicago*, 74 Fed. R. 981; *Sheldon v. Wabash &c.*, 105 Fed. R. 785; *In re Lenon*, 166 U. S. 548; *Central Stock Yards v. L. & N.*, 192 U. S. 568.

This exclusive jurisdiction must be distinguished from the concurrent jurisdiction of the state court over questions in the interstate commerce not arising or based upon the Act. *Murray v. Chicago &c.*, 62 Fed. R. 24.

Jurisdiction of State Courts. Repeals by implication are not favored, and a statute will not be construed as abrogating an existing common law remedy, but it will be so construed if such pre-existing right is so repugnant to it as to deprive it of its efficacy and render its provisions nugatory.

The Interstate Commerce Act was intended to afford an effective and comprehensive means for redressing wrongs resulting from unjust discriminations and undue preference, and to that end placed upon carriers the duty of publishing schedules of reasonable and uniform rates; and consistently with the provisions of that law, a shipper

cannot maintain an action at common law in a state court for excessive and unreasonable freight rates exacted on interstate shipments where the rates charged were those which had been duly fixed by the carrier according to the Act and had not been found unreasonable by the Interstate Commerce Commission. *Tex. & Pac. Ry. v. Abilene Cotton Oil Co.*, 204 U. S. 426; *So. Ry. v. Tift*, 206 U. S. 428; *Ill. Cent. Ry. v. I. C. C.*, 206 U. S. 441.

Although an action at law for damages to recover unreasonable railroad rates which have been exacted in accordance with the schedule of rates as filed, is forbidden by the Interstate Commerce Act, the Circuit Court may entertain jurisdiction of a bill in equity to restrain the filing or enforcement of a schedule of unreasonable rates or a change to unjust or unreasonable rates. *Potlatch Lumber Co. v. S. F. & N. Ry.*, 157 Fed. R. 588; *L. & N. Ry. v. R. R. Com. of Alabama*, 157 Fed. R. 944; *Central of Ga. Ry. v. McLendon*, 157 Fed. R. 961; *Kiser Co. v. Central of Ga. Ry.*, 158 Fed. R., 193; *American Union Coal Co. v. Penna. Ry.*, 159 Fed. R. 278.

Reparation for excess rates must be obtained in a proceeding before the Interstate Commerce Commission. *Southern Railway v. Tift*, 206 U. S. 428.

Cases arising under the laws of the United States are such as grow out of the legislation of Congress, whether they constitute a right or privilege, or claim or protection, or defense of the party, in whole or in part, by whom they are asserted. *Tennessee v. Davis*, 100 U. S. 257; *Starin v. New York*, 115 U. S. 248; *Kansas &c. v. Atchison &c.*, 112 U. S. 414; *Ames v. Kansas*, 111 U. S. 449; *Railroad v. Mississippi &c.*, 102 U. S. 135.

A court of equity has power to contrive new remedies and issue unprecedented orders to enforce rights secured by Federal legislation, provided no illegal burden is imposed thereby. *Toledo &c. Ry. v. Penna. &c.*, 54 Fed. R. 746; *Jay v. St. Louis*, 138 U. S. 1.

Persons Claiming to be Damaged May Elect Whether to Complain to the Commission or Bring Suit in a United States Court—Officers of Defendant May be Compelled to Testify

SEC. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this Act, in any District or Circuit Court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

In an action at law to recover damages for the exaction of an alleged unreasonable freight charge, the rate established in conformity with the Act to regulate commerce must be treated by the court as binding upon the shipper, until regularly corrected in the mode provided in the statute. *Swift v. Philadelphia*, 64 Fed. R. 59; *Kinnavey v. Terminal &c.*, 81 Fed. R. 802; *Texas & Pac. Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426.

Penalties for Violations of Act by Carriers, or When the Carrier is a Corporation, Its Officers, Agents, or Employees: Fine and Imprisonment

SEC. 10. (*As amended March 2, 1889.*) That any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this Act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any District Court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges, for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

Penalties for False Billing, etc., by Carriers, Their Officers or Agents: Fine and Imprisonment

Any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

Penalties for False Billing, etc., by Shippers and Other Persons: Fine and Imprisonment

Any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier, subject to the provisions of this Act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and willfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court.

Penalties for Inducing Common Carriers to Discriminate Unjustly: Fine and Imprisonment—Joint Liability with Carrier for Damages

If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce any common carrier subject to the provisions of this Act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action on the case to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.

For a discussion of this section see Judson on Interstate Commerce, Sec. 253.

Effect of fixing a lower rate in bill of lading than the rate established in the tariff filed with the Commission. *R. R. v. Hefley*, 158 U. S. 98; *Tex. & Pac. Ry. v. Mugg*, 202 U. S. 242.

Indictment for pooling freights. *In re Pooling Freights*, 115 Fed. R. 588.

Conspiracy against the United States. *Toledo &c. v. Penna. &c.*, 54 Fed. R. 730.

Indictment for failure to furnish cars. *U. S. v. B. & O. R. R.*, 153 Fed. R. 997.

What particulars indictment must show. *U. S. v. B. & O. R. R.*, 153 Fed. R. 997, and cases cited; *U. S. v. Simmons*, 96 U. S. 360; *Patten v. U. S.*, 155 U. S. 438; *U. S. v. Benson*, 70 Fed. R. 591; *Peters v. U. S.*, 94 Fed. R. 127; *U. S. v. Cruikshank*, 92 U. S. 542.

Interstate Commerce Commission—How Appointed—Terms of Commissioners

SEC. 11. That a Commission is hereby created and established to be known as the Interstate Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this Act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, Anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired time of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this Act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission. (*See Sec. 24, enlarging Commission and increasing salaries.*)

Power and Duty of Commission to Inquire into Business of Carriers and Keep Itself Informed in Regard Thereto—Commission Required to Execute and Enforce Provisions of This Act—Duty of District Attorney to Prosecute Under Direction of Attorney-General—Costs and Expenses of Prosecution to be Paid out of Appropriation for Courts—Power of Commission to Require Attendance and Testimony of Witnesses and Production of Documentary Evidence

SEC. 12. (*As amended March 2, 1889, and February 10, 1891.*) That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this Act; and, upon the request of the Commission, it shall be the duty of any District Attorney of the United States to whom the Commission may apply to institute in the

proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this Act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this Act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

Commission May Invoke Aid of Courts to Compel Witnesses to Attend and Testify

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

Penalty for Disobedience to Order of the Court—Claim that Testimony or Evidence Will Tend to Criminate Will not Excuse Witness

And any of the Circuit Courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this Act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Testimony May be Taken by Deposition—Commission May Order Testimony to be Taken by Deposition—Reasonable Notice Must be Given—Testimony by Deposition May be Compelled in the Same Manner as Above Specified

The testimony of any witness may be taken, at the instance of a party in any proceeding or investigation depending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investiga-

tion. Such depositions may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party, or his attorney, proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Manner of Taking Depositions

Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

When Witness Is in a Foreign Country—Depositions Must Be Filed With the Commission

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

Fees of Witnesses and Magistrates

Witnesses whose depositions are taken pursuant to this Act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

The object of the Interstate Commerce Act is not to aid complainants in maintaining a private suit if the investigation develops anything of which he could take advantage.

The complaint should state facts showing a violation of the regulating statute, or otherwise the Commission has no jurisdiction to make a corrective order.

It must be shown that some public purpose would be subserved or that considerations of public interest are involved or the proper discharge of official duty, before the Commission should exercise its powers of investigation and inquiry under the twelfth section of the Act. *Manning v. C. & A. &c. Ry. Co.*, 13 I. C. C. 125; *I. C. C. v. Harriman*, 157 Fed. R. 432.

Self-incriminating testimony and immunity from prosecutions. *Counselman v. Hitchcock*, 142 U. S. 547; *Brown v. Walker*, 161 U. S. 591.

The statutory immunity is personal to the witness testifying. There is no immunity to the corporation by reason of the testimony of its officers, nor can an official or employee refuse to produce books of an employer corporation on the ground that it would implicate the corporation employer. *Gardner v. Early*, 69 Iowa, 42; *Hale v. Henkel*, 201 U. S. 43; *McAllister v. Henkel*, 201 U. S. 90; *Otis Co. v. Ludlow*, 201 U. S. 147; *Beef Trust Cases*, 142 Fed. R. 808. See Knox Act of June 30, 1906.

Witnesses can be compelled to appear and testify before the Commission and to produce books and papers. *Brimson v. I. C. C.*, 154 U. S. 447; *I. C. C. v. Baird*, 194 U. S. 24; *Rice v. C., W. & B. Ry.*, 3 I. C. C. 186.

The Commission is not a court and has no judicial power, but it may exercise *quasi*-judicial powers. *Texas &c. v. I. C. C.*, 162 U. S. 197; *I. C. C. v. Cincinnati &c.*, 167 U. S. 479; *I. C. C. v. L. & N. Ry.*, 73 Fed. R. 409; *I. C. C. v. Cincinnati &c. Ry.*, 64 Fed. R. 981; *I. C. C. v. C., N. O. & T. P. Ry.*, 76 Fed. R. 183; *Kentucky v. L. & N. Ry.*, 37 Fed. R. 567.

The Commission has no legislative powers. Cases cited above.

The carriers may fix rates in the first instance, but the rates so fixed must not conflict with the Act. Cases cited above.

No question of contempt can arise before the Commission, because it is not a judicial body. *I. C. C. v. Brimson*, 154 U. S. 447.

Immunity of Witnesses. *Hale v. Henkel*, 201 U. S. 43; *Nelson v. U. S.*, 201 U. S. 92; *General Paper Co. v. U. S.*, 201 U. S. 117; *U. S. v. Armour & Co.*, 142 Fed. R. 808.

Complaints to Commission—How and by Whom Made—How Served Upon Carriers—Reparation by Carriers Before Investigation—Investigations of Complaints by the Commission

SEC. 13. That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Complaints Forwarded by State Railroad Commissions—Institution of Inquiries by the Commission on Its Own Motion

Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

Complainant Need not be Directly Damaged

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

Procedure Before Commission. Dilatory proceedings are considered objectionable. In re Procedure in Cases at Issue, 1 I. C. C. 223. Any person or association whether incorporated or not does not have to show special damage to itself as a society. *Boston Fruit & Produce Exchange v. N. Y. & N. E. Ry.*, 4 I. C. C. 664; *Cattle Raisers v. F. W. & D. C. Ry.*, 7 I. C. C. 513.

Commission may bring in all parties interested in a case. *Mc-*

Millan & Co. v. Western Classification Committee, 4 I. C. C. 276; Minneapolis v. G. N. Ry., 5 I. C. C. 571.

The procedure is in the simplest form consistent with reasonable certainty.

When facts are not agreed, depositions may be taken upon notice, after answer filed. Assignments for hearing are made upon request of either party, and parties are heard orally or on briefs. In re Procedure in Cases at Issue, 1 I. C. C. 223.

The Commission will not express opinions on abstract questions, nor on questions presented on *ex parte* statements of facts, nor on questions of the statute presented for its advice, but without any controversy pending before it on complaint of violation of law. Petition of the Order of Railway Conductors, 1 I. C. C. 8.

Nor for injury to goods resulting from delay, detention, etc., or from any cause not attributable to any violation of the Act. Duncan v. A., T. & S. F. Ry., 6 I. C. C. 85.

When a carrier fails to answer the complaint filed, the Commission takes such proof of the facts as may be deemed proper and reasonable, and makes an order therein accordingly. Tecumseh Celery Co. v. C. J. & M. Ry., 5 I. C. C. 663.

The burden of proof is upon the party making the complaint, and relief will not be granted without proof, Banner Milling Co. v. N. Y. C. & H. R. Ry., 14 I. C. C. 398; Holmes v. Southern Ry., 8 I. C. C. 561; but in case of departure from established rates and certain disparities in rates the burden is upon the carrier. Phillips, Bailey & Co. v. L. & N. Ry., 8 I. C. C. 93; Missouri &c. v. Texas &c., 31 Fed. R. 862.

Cases must be prosecuted with reasonable diligence. Producers' Pipe Line Co. v. St., L. I. M. & S. Ry., 12 I. C. C. 186.

Where a territory has been admitted into the Union after proceedings instituted and before judgment, the case will be dismissed for want of jurisdiction. Hussey v. C., R. I. & Pac. Ry., 13 I. C. C. 366.

The Commission has no authority to require carriers to establish special fares. Field v. So. Ry. Co., 13 I. C. C. 298.

Res Adjudicata—Estoppel. While there is in the nature of things no estoppel of record in proceedings before this body, the Commission must of necessity, when it reaches a conclusion upon a given state of facts, adhere to that conclusion in subsequent proceedings unless some new facts or changed conditions are brought to its attention or unless it proceeded upon some misconception in reaching the original decision. Banner Milling Co. v. N. Y. C. & H. R. Ry., 14 I. C. C. 401.

Commission Must Make Report of Investigations, Stating Its Conclusions and Order—Reparation

SEC. 14. (*Amended March 2, 1889, and June 29, 1906.*) That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

Reports of Investigations Must be Entered of Record—Service of Copies on Parties

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

Reports and Decisions—Authorized Publication Competent Evidence—Publication and Distribution of Annual Reports of Commission

The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports.

As the law formerly was, the Commission was required to make a report in writing in respect to every investigation, which should include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party who may be found to have been injured, but this provision was amended June 29, 1906, so the report shall state the conclusions of the Commission, together with its decisions, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made. See further under Sec. 16.

Commission May Determine and Prescribe Just and Reasonable Rates to be Observed as Maximum Charges—Commission May Determine and Prescribe Just and Reasonable Regulations or Practices—Commission May Order Carriers to Cease and Desist From Full Extent of Violations Found—Orders of the Commission Effective as Prescribed but in not Less Than Thirty Days—Orders Shall Continue in Force not Exceeding Two Years, Unless Suspended or Set Aside by Commission or Court—When Carriers Fail to Agree on Divisions of Joint Rate Commission May Prescribe Proportion of Such Rate to be Received by Each Carrier

SEC. 15. (*As amended June 29, 1906.*) That the Commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint made as provided in section thirteen of this Act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates, or charges whatsoever, demanded, charged, or collected by any common carrier or carriers, subject to the provisions of this Act, for the transportation of persons or property as defined in the first section of this Act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates, are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed; and to make an order that the carrier shall cease and desist from such violation, to the extent to which the Commission find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and shall conform to the regulation or practice so prescribed. All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof, the Commission may after hearing make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

Commission May Establish Through Routes and Joint Rates

The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this Act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line.

Commission May Determine Just and Reasonable Charge or Allowance for Service Rendered by Owner of Property Transported or for Any Instrumentality Furnished by Such Owner and Used in Such Transportation

If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the service so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for in this section.

Enumeration of Powers in This Section not Exclusive

The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this Act.

For a discussion of the power granted the Commission by this section see *Cattle Raisers' Association v. M. K., & T. Ry.*, 12 I. C. C. 1.

Concerted Advance in Freight Rates. *Ill. Cent. Ry. v. I. C. C.*, 206 U. S. 441.

Through Routes and Joint Rates. *Loup Creek Colliery Case*, 12 I. C. C. 471. See under Sec. 6.

Ordinarily a through route ought not to exceed the sum of the locals, but the Commission has also held that where the sum of the local rates established by state authority is less than a reasonable interstate rate the higher rate may be charged. *Montg. Freight Bureau v. W. Ry. of Ala.*, 14 I. C. C. 150.

Allowances. No allowance of any kind not specified in tariffs

can lawfully be paid. *La Salle &c. v. Chicago N. W. Ry.*, 13 I. C. C. 610; *Victor Fuel Co. v. A., T. & S. F. Ry.*, 14 I. C. C. 119.

Allowances to Elevators, by the *Union Pacific Ry. Co.*, 14 I. C. C. 315.

Allowances for Services. Complainant asks allowances from carriers for maintenance of storage tracks and for switching services. Complainant is not entitled to compensation for doing that which it claims the defendants are under obligation to do, but which it does not and could not permit them to do. Relief against a defendant must ordinarily be predicated upon his failure or refusal to do what he is legally bound to do and not upon the fact that the complainant has volunteered to do it for him.

Carriers are under no duty to extend their transportation obligations with the extension of great industrial plants like that of the complainant. They cannot be called upon as part of their contract of transportation to make deliveries through a network of interior switching tracks constructed as plant facilities to meet the necessities of the industry. The service performed by complainant is essentially a shipper's service rather than a part of the transportation service, and that the storage and switch tracks and all the internal arrangements and facilities for moving the cars are for complainant's own convenience and necessary to the economic conduct of its business. The service within the plant is not a service which complainant can lawfully call upon the carriers to perform for it, and consequently is not a service for which it may lawfully demand compensation. Their obligation as common carriers includes only a delivery and acceptance of carload shipments at some reasonably convenient point of interchange. *General Electric Co. v. N. Y. C. & H. R. Ry.*, 14 I. C. C. 237; *Solway Process Co. v. D., L. & W. Ry.*, 14 I. C. C. 246.

It has been frequently held by the Commission that it has no power to enforce contracts between carriers and shippers or to aid the parties thereto to enforce them, and it may be added that it is no part of the functions of the Commission to make a finding of an amount due predicated upon a contract, express or implied, which could be the basis of a civil suit for the recovery thereof.

The purpose of the Act was to insure fair and equal treatment of shippers by carriers by regulating, more or less, the conduct of the carriers. The powers given to prevent unreasonable rates, unjust discrimination, undue prejudice and advantage, rebates and all forms of inequalities by whatever device employed, including the power to determine and prescribe a reasonable rate, and determine

and fix a reasonable charge to be paid by the carrier to the shipper, are incidental to the main purpose and necessary to accomplish the intent of Congress. The "allowance" provision is in harmony with and is one of the means provided to accomplish the great purpose of the Act, to be employed when inequalities are discovered. The chief function of the Commission is to inquire into and bring to light the various practices by which the inequalities are brought about, and when ascertained, to impose punishment in the nature of damages in favor of the party injured, against the offending carrier, for and on account of a violation of some provision of the Act. If the allowance produces any inequality and unfair treatment among shippers then the Commission is vested with authority to discover it and punish it as above stated, but it is certain that inequalities among shippers, in the matter of allowances, must be averred and proved. That there has been an infraction of the law, in such cases, is the jurisdictional test of the authority of the Commission to make an order. The power of the Commission, in such cases, is predicated upon an act *ex delicto* in its nature.

If the above is a true statement of the theory and practical effect of the law, it is hard to understand how the General Electric Company could have answered an objection to the jurisdiction of the Commission. The case brought by this complainant was based upon a count of *quantum meruit* for services performed—a plain common law action of assumpsit upon an implied promise cognizable in the courts exclusively. Reparation is inherently, "damages for an injury, amends for a tort," and this must mean damages for a civil injury other than a breach of contract. No reparation could have been awarded in any aspect of the case.

It had been held in preceding cases that publication of any allowances made to shippers was a prerequisite to a lawful payment thereof, but the absence of any provision in the tariffs of the defendants making allowances for services rendered or instrumentalities furnished, apparently did not influence the decision in this case.

It is probable the Commission could not require the carriers to make and publish an allowance, because this would oblige carriers to perform contracts of a nature never contemplated by them and not affected with any public interest involving rights of transportation, and because Congress left it to the carriers to establish their own rates, regulations and allowances in the first instance, and, further, because no such power is vested in the Commission by law, expressly or by necessary implication.

Award of Damages by Commission

SEC. 16. (*Amended March 2, 1889. Following section substituted June 29, 1906.*) That if, after hearing on a complaint made as provided in section thirteen of this Act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

Petition to United States Court in Case Carrier Does not Comply with Order for Payment of Money—Findings of Fact of Commission Shall be Prima Facie Evidence in Reparation Cases—Petitioner not Liable for Costs in Circuit Court—Petitioner's Attorney's Fees—Limitation Upon Action—Accrued Claims

If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the circuit court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court within one year from the date of the order, and not after: *Provided*, That claims accrued prior to the passage of this Act may be presented within one year.

Joint Plaintiffs May Sue Joint Defendants in Courts on Awards of Damages—Service of Process

In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be main-

tained by such joint plaintiffs, and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

Service of Order of Commission by Mailing

Every order of the Commission shall be forthwith served by mailing to any one of the principal officers or agents of the carrier at his usual place of business a copy thereof; and the registry mail receipt shall be prima facie evidence of the receipt of such order by the carrier in due course of mail.

Commission May Suspend or Modify Order

The Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

Carriers, Their Agents and Employees, Must Comply with Such Orders

It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

Punishment by Forfeiture for Refusal to Obey Order of Commission Under Sec. 15

Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of section fifteen of this Act shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense. and in case of a continuing violation each day shall be deemed a separate offense.

Forfeiture Payable into Treasury and Recoverable in Civil Suit

The forfeiture provided for in this Act shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

Duty of District Attorneys to Prosecute—Costs and Expenses to be Paid out of Appropriation for Court Expenses—Commission May Employ Special Counsel

It shall be the duty of the various District Attorneys, under the

direction of the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. The Commission may, with the consent of the Attorney-General, employ special counsel in any proceeding under this Act, paying the expenses of such employment out of its own appropriation.

Petition to United States Courts in Cases of Disobedience to Order of Commission Other Than for Payment of Money—Jurisdiction of Court—Court Must Enforce Disobeyed Order if Regularly Made and Duly Served

If any carrier fails or neglects to obey any order of the Commission, other than for the payment of money, while the same is in effect, any party injured thereby, or the Commission in its own name, may apply to the circuit court in the district where such carrier has its principal operating office, or in which the violation or disobedience of such order shall happen, for an enforcement of such order. Such application shall be by petition, which shall state the substance of the order and the respect in which the carrier has failed of obedience, and shall be served upon the carrier in such manner as the court may direct, and the court shall prosecute such inquiries and make such investigations, through such means as it shall deem needful in the ascertainment of the facts at issue or which may arise upon the hearing of such petition. If, upon such hearing as the court may determine to be necessary, it appears that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction, or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it, or them, obedience to the same; and in the enforcement of such process the court shall have those powers ordinarily exercised by it in compelling obedience to its writs of injunction and mandamus.

Appeal to Supreme Court of United States

From any action upon such petition an appeal shall lie by either party to the Supreme Court of the United States, and in such court the case shall have priority in hearing and determination over all other causes except criminal causes, but such appeal shall not vacate or suspend the order appealed from.

Venue of Suits Brought Against Commission to Enjoin, Set Aside, Annul, or Suspend Order of Commission—Provisions of Expediting Act to Apply—Appeal to Supreme Court—Priority of Case in Supreme Court—No Injunction or Interlocutory Order to be Granted Except After not Less Than Five Days' Notice—Appeal to Supreme Court From Interlocutory Order or Decree in Thirty Days

The venue of suits brought in any of the circuit courts of the United

States against the Commission to enjoin, set aside, annul, or suspend any order or requirement of the Commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office, and may be brought at any time after such order is promulgated. And if the order or requirement has been made against two or more carriers then in the district where any one of said carriers has its principal operating office, and if the carrier has its principal operating office in the District of Columbia then the venue shall be in the district where said carrier has its principal office; and jurisdiction to hear and determine such suits is hereby vested in such courts. The provisions of "An Act to expedite the hearing and determination of suits in equity, and so forth," approved February eleventh, nineteen hundred and three, shall be, and are hereby, made applicable to all such suits, including the hearing on an application for a preliminary injunction, and are also made applicable to any proceeding in equity to enforce any order or requirement of the Commission, or any of the provisions of the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof or supplemental thereto. It shall be the duty of the Attorney-General in every such case to file the certificate provided for in said expediting Act of February eleventh, nineteen hundred and three, as necessary to the application of the provisions thereof, and upon appeal as therein authorized to the Supreme Court of the United States, the case shall have in such court priority in hearing and determination over all other causes except criminal causes: *Provided*, That no injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing after not less than five days' notice to the Commission. An appeal may be taken from any interlocutory order or decree granting or continuing an injunction in any suit, but shall lie only to the Supreme Court of the United States: *Provided further*, That the appeal must be taken within thirty days from the entry of such order or decree and it shall take precedence in the appellate court over all other causes, except causes of like character and criminal causes.

Rate Schedules, Contracts, or Agreements, and Carriers' Annual Reports Filed With Commission and in Custody of Secretary are Public Records, Receivable in Courts and by the Commission as Prima Facie Evidence—Certified Copies or Extracts Therefrom Also Prima Facie Evidence

The copies of schedules and tariffs of rates, fares, and charges, and of all contracts, agreements, or arrangements between common carriers filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual reports of carriers made to the Commission, as required by the provisions of this Act, shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Com-

mission and in all judicial proceedings; and copies of or extracts from any of said schedules, tariffs, contracts, agreements, arrangements, or reports made public records as aforesaid, certified by the secretary under its seal, shall be received in evidence with like effect as the originals.

Procedure. A proceeding to enforce an order of the Commission is an original independent proceeding in which the questions at issue are tried and determined *de novo*. The court is not restricted to the mere ministerial duty of enforcing the order of the Commission. *I. C. C. v. Cincinnati*, 162 U. S. 184; *Kentucky v. L. & N. Ry.*, 37 Fed. R. 567; *I. C. C. v. So. Pac. Ry.*, 123 Fed. R. 601.

Upon demurrer the findings will be liberally construed in order to support the order of the Commission. *I. C. C. v. Chicago &c.*, 94 Fed. R. 272.

The findings of fact of the Commission are merely *prima facie* proof of the facts found, and may be overcome by other evidence. *I. C. C. v. Atchison &c. Ry.*, 50 Fed. R. 295, and appeal dismissed; *I. C. C. v. Atchison &c. Ry.*, 149 U. S. 264; *U. S. v. Mo. Pac. Ry.*, 65 Fed. R. 903; *I. C. C. v. East Tenn.*, 85 Fed. R. 107; *I. C. C. v. Chicago &c.*, 94 Fed. R. 272; *I. C. C. v. So. Ry.*, 117 Fed. R. 741.

Where the Commission has made error of law in failing to receive certain evidence, the proper practice is to remand the case to the Commission for its findings. *Louisville &c. v. Behlmer*, 175 U. S. 676; *East Tenn. v. I. C. C.*, 181 U. S. 1; *Cincinnati &c. Ry. v. I. C. C.*, 162 U. S. 184, 238.

Complainants attacked a local rate with ulterior object of securing a reduction of the joint through rate upon the theory that if the local rate is reduced to such a point that the combination of locals is less than the joint rate, the carriers could not justify a rate higher than the combination of locals; and therefore a reduction of the through rate would necessarily result either from the voluntary action of the carrier or by requirement of this Commission in an appropriate proceeding. The Commission may properly require the presentation of the direct question in which they are actually concerned. Complaint dismissed. *National Petroleum Asso. v. C., M. & St. P. Ry.*, 14 I. C. C. 284.

A restraining order should command or forbid some specific act, and not simply repeat the general language of the statute. *So. Pac. Co. v. Colo. Fuel Co.*, 101 Fed. R. 779.

Injunctions. *I. C. C. v. Cincinnati &c. Ry.*, 64 Fed. R. 981; *Shinkle v. L. & N. Ry. Co.*, 62 Fed. R. 690; *I. C. C. v. Lehigh Valley &c.*, 49 Fed. R. 177; *I. C. C. v. B. & O. R. R. Co.*, 145 U. S. 263;

Perkins v. No. Pac. Ry., 155 Fed. R. 445; So. Ry. v. McNeill, 155 Fed. R. 756; Potlatch Lumber Co. v. S. F. & N. Ry., 157 Fed. R. 588.

Weight of the Findings and Order of the Commission. Kentucky v. L. & N. Ry., 37 Fed. R. 567; I. C. C. v. L. & N. Ry., 102 Fed. R. 709; I. C. C. v. L. & N. Ry., 118 Fed. R. 613; I. C. C. v. So. Pac. Ry., 123 Fed. R. 596; Western &c. v. Penna. &c., 137 Fed. R. 343; U. S. v. Texas &c., 162 U. S. 1; Cincinnati &c. v. I. C. C., 162 U. S. 184; L. & N. Ry. v. Behlmer, 175 U. S. 648; East Tenn. &c. v. I. C. C., 181 U. S. 1; Cincinnati, H. & D. Ry. Co. v. I. C. C., 206 U. S. 142; Ill. Cent. Ry. v. I. C. C., 206 U. S. 454.

Under the law enacted June 29, 1906 (Sec. 14), the Commission is required to include in its report the findings of fact only in cases where damages are awarded, and subsequently, in Sec. 16, in providing for the enforcement of such orders it is enacted that the findings and order of the Commission shall be *prima facie* evidence of the facts therein stated. There is no such provision in respect to the weight of the report stating the conclusions of the Commission which it is required to make in all other cases, and from this it appears that Congress intended that the courts should distinguish between the findings of fact, and the conclusions of the Commission, and as the findings of fact are only required to be stated in reparation cases or claims for money damages, it follows that the provision making the findings and order of the Commission *prima facie* evidence, applies only to proceedings for the recovery of money, and where it is sought to enforce an order other than for the payment of money, no weight as evidence is given by statute to the order.

Reparation. Complainant must make proof of his damages. Grain Shippers v. Ill. Cent. Ry., 8 I. C. C. 158.

The complaint must name the members on whose behalf it is filed, and specify and describe the shipments as to which complaint is made, otherwise it does not stop the running of the statute of limitations. Missouri & Kansas Shippers' Association v. A., T. & S. F. Ry., 13 I. C. C. 411.

The violations of law found in these cases do not arise through any breach of contract, but from failure on the part of carriers to perform their public duties. Independent Refiners of Oil City and Titusville v. Western N. Y. and Penn. Ry., 6 I. C. C. 378; Osborne v. C. & N. W. Ry., 48 Fed. R. 49; Osborne v. C. & N. W. Ry., 52 Fed. R. 912; Ratican v. Terminal Asso., 114 Fed. R. 666; Parsons v. C. & N. W. Ry., 167 U. S. 447; Southern Pine Lumber Co. v. So. Ry., 14 I. C. C. 195.

The carriers participating in the wrong are liable to the party

injured, jointly and severally. Cooley on Torts, 223, 226, 230, 244; 6 L. R. A. 630; Sedgwick on Damages, 431; Nicola, Stone & Myers Co. v. L. & N. Ry., 14 I. C. C. 199.

The power of the Commission to award reparation does not extend to the division of rates between connecting carriers. Claims *ex contractu* are not cognizable by the Commission. It cannot, therefore, order the payment of money for services performed, nor for a debt due one carrier from another on account of joint rates for a joint service. Such claims rest upon contract, express or implied. The jurisdiction of the Commission and its authority in this respect are limited to reparation for damages caused by violation of some provision of the Act to regulate commerce. La Salle &c. v. Chicago & N. W. Ry., 13 I. C. C. 610.

Reparation allowed complainant for charges paid carrier for insurance and storage of grain, the same having been delivered to carrier for immediate shipment and not for storage and shipment. Distinction explained in this case. England v. B. & O. Ry., 13 I. C. C. 614.

The measure of damage is the difference between the rate to which they were entitled and the rate which they were compelled to pay. Burgess v. Trans. Freight Bureau, 13 I. C. C. 668; Nicola, Stone & Myers Co. v. L. & N. Ry., 14 I. C. C. 199.

Complainants cannot slumber upon their rights. Burgess v. Trans. Freight Bureau, 13 I. C. C. 668.

The consumer cannot and does not recover damages, and if complainants were obliged to follow every transaction to its ultimate result and to trace out the exact commercial effect of the freight rate paid, it would never be possible to show damages with sufficient accuracy to justify them. Burgess v. Trans. Freight Bureau, 13 I. C. C. 668; Nicola, Stone & Myers Co. v. L. & N. Ry., 14 I. C. C. 199.

In all proceedings before the Commission, both formal and informal, the essential prerequisite to any award of damages is the condemnation of a rate, rule or practice as unreasonable and the establishment in lawful tariff publication of the rate, rule or practice that is made the basis of such award. Pueblo Trans. Asso. v. So. Pac. Co., 14 I. C. C. 84.

Where Actions Must be Brought. Proceedings to recover predicated upon the unreasonableness of the established rate must be originally brought through the Commission. Tex. & Pac. Ry. Co. v. Abilene Cotton Oil Co., 204 U. S. 426; So. Ry. v. Tift, 206 U. S. 428. The court said in Texas & Pac. Ry. v. Abilene Cotton Oil

Co., 204 U. S. 448, "that a shipper seeking reparation predicated upon the unreasonableness of an established rate must, under the Act to Regulate Commerce, primarily invoke redress through the Interstate Commerce Commission, which body alone is vested with power originally to entertain proceedings for the alteration of an established schedule, because the rates fixed therein are unreasonable;" it is understood that this view was very much qualified in *Tift v. So. Ry.*, 206 U. S. 439, which says there is nothing in the *Abilene* case "which precludes the parties, after action by the Commission declaring rates unreasonable, from stipulating in the proceedings prosecuted under Sec. 16 that the court adjudge the amount of reparation. By the action of the Commission the foundation for reparation, as provided in the Interstate Commerce Act, was established, and the inquiry submitted to the court was but of its amount, and had the natural and justifiable inducement to end all the controversies between the parties without carrying part of them to another tribunal. . . . What the court may award upon the coming in of the report of the master we cannot know. Presumably it will make the reparation adequate for the injury, and award only the advance on the old rate and to those who are parties to the cause." It would seem to follow from this decision that after a rate has been found to be unreasonable by the Commission, parties claiming reparation on account thereof, may file their suits in the courts.

A claim for damages is not a suit to recover back the amount the defendant company may have received, but it is an action sounding in tort for damages wherein the shipper seeks to recover damages claimed to have been caused him by charging an illegal rate. Before any party can recover under the Act he must show not merely the wrong of the carrier, but that the wrong has in fact operated to his injury. *Osborne v. C. & N. W. Ry.*, 48 Fed. R. 57; *Parsons v. C. & N. W. Ry.*, 167 U. S. 447; *Ratican v. Terminal Ry. Asso.*, 114 Fed. R. 671; *Nicola, Stone & Myers Co. v. Lou. & Nash. Ry.*, 14 I. C. C. 199.

No Protest Necessary. Payments made by one who is not on terms of practical equality with the person to whom such payments are made are looked upon, not as voluntary payments, but as payments made under compulsion. A common carrier and a shipper do not stand upon terms of equality. The shipper is usually under a practical compulsion to have his property transported at once. Accordingly payment by a shipper of an unreasonable charge, or one in excess of the amount fixed by law, is not looked upon as one

of voluntary payment and the shipper may recover even if no protest is made at the time of the overpayment. Page on Contracts, Sec. 810; *Swift v. U. S.*, 111 U. S. 28; 18 L. R. A. 105; *Baer Bros. v. Mo. Pac. Ry.*, 13 I. C. C. 329; *So. Pine Lumber Co. v. So. Ry.*, 14 I. C. C. 195.

Failure to Post Tariff—Error of Carrier—No Refund. The relations between a shipper and common carrier are so different from the relations between private business enterprises that a somewhat different rule must apply, otherwise the underlying principles of the Act would be seriously impaired, its purposes would be defeated and the very discriminations which it condemns would be sanctioned. *Pueblo Trans. Asso. v. So. Pac. Co.*, 14 I. C. C. 85.

To Whom Shall Reparation be Paid. Sec. 8 of the Act provides that the carrier shall be liable to "any person injured." This section relates to a proceeding in the courts, but the Commission would hardly adopt any other criterion for determining to whom the refund should be paid. The object, then, is to discover who is the "person injured." If the carrier is liable to respond in damages to make good an injury inflicted upon a particular person, it follows that the "person injured" or the beneficiary of the refund, must have been injured *by the carrier*. Therefore, the cause of action grows out of some transaction with the carrier. The carrier's connection with the transaction is solely with respect to its transportation. Then the injury grows out of a transaction had between the person injured and the carrier in respect to the transportation of the commodity. The person injured is identically the same person who had the transaction with the carrier in respect to the transportation, or on whose account such transaction was had. This must be true, because the carrier cannot be held to have injured some person who subsequently comes into possession of the commodity, a total stranger to the transportation transaction. To constitute a tort the relation of cause and effect between the act and injury must be clearly shown. The damage must not be remote or indirect, and, therefore, reparation could not be awarded to a person who had no relations with the carrier and no connection with the transportation, but it should be given in favor of that person who was the real party to the contract for transportation which brought about the illegal act and was the direct and proximate cause thereof, who actually paid the excessive exaction as the price of transportation under a literal compulsion in order to secure the services of the carrier. The contract for carriage or the bill of lading does not always show the real party to the transaction with

the carrier. The person injured is better ascertained and more certainly discovered by an examination of the terms of the sale of the commodity to be transported, whether it is a sale f. o. b. point of origin or f. o. b. destination. This fact determines the ownership of the commodity during transportation and until delivery, and such owner is the person injured by the excessive charge, whether vendor or vendee, for reasons above stated and because as the true owner he is liable for the freight charges thereon and is taxed and burdened with the lien therefor and is compelled to discharge it before delivery can be made to the vendee.

There may be special agreements or other controlling circumstances and conditions that would, in equity, designate some other hand to receive the refund, and there may be particular cases where the consumer would be found to be the party injured, but the Commission would be transcending its powers and encroaching upon the domain of equity jurisprudence to follow the threads of equity, if any, into the intricate mazes of such an inquiry and to undertake to trace the ultimate effect of the unlawful act through a labyrinth of recoupments, indemnities and reimbursements. See *Nicola, Stone & Myers Co. v. Lou. & Nash. Ry.*, 14 I. C. C. 199.

Rates Voluntarily Reduced by Carrier. The effect of a voluntary reduction of rates by a carrier as an evidence of their unreasonableness in establishing a right to reparation, has been alluded to in some of the decisions. In the *Abilene Cotton Oil Case*, 204 U. S. 442, the court says: "Although an established schedule of rates may have been altered by a carrier voluntarily or as the result of an enforcement of an order of the Commission to desist from violating the law, rendered in accordance with the provisions of the statute, it may not be doubted that the power of the Commission would nevertheless extend to hearing legal complaints of, and awarding reparation to, individuals for wrongs unlawfully suffered from the application of the unreasonable schedule during the period when such schedule was in force." The Commission says in *Ottumwa Bridge Co. v. C., M. & St. P. Ry.*, 14 I. C. C. 125, "we are, however, unwilling to subscribe to the theory that the voluntary reduction of a rate by a carrier conclusively shows that the former rate was unjust and unreasonable, and that reparation should be granted on all shipments moving thereunder within the period of the statute of limitation."

Speculative damages will not be allowed. *Perry v. F. C. & Pa. Ry.*, 5 I. C. C. 97. The Commission will not consider claims not arising out of the duties imposed by the Act. *Capehart &c. v. W.*

N. Y. & Pa. Ry., 4 I. C. C. 265. For recovery of excess over published schedule of charges. *Suffern, Hunt & Co. v. I., D. & W. Ry.*, 7 I. C. C. 255. As to jurisdiction in reparation cases. *Macloon v. C. & N. Ry.*, 5 I. C. C. 84.

For other cases see *Cattle Raisers v. F. W. & D. C. Ry.*, 7 I. C. C. 513; *Cattle Raisers &c. v. C., B. & Q. Ry.*, 10 I. C. C. 83; *Farmers' Warehouse Co. v. L. & N. Ry.*, 12 I. C. C. 457. Power to award is necessarily dependent upon or coupled with the power to condemn the rate so charged. *Hussey v. C., R. I. & Pac. Ry.*, 13 I. C. C. 366.

Limitation of Actions. A majority of the Commission recently made the following ruling upon the statute of limitations contained in this section, viz.:

"1. A cause of action accrues, as that phrase is used in the Act, on the date on which the freight charges are actually paid. The expense bill, and not the waybill, is therefore the important document in considering reparation claims.

"2. Claims filed since August 28, 1907, must have accrued within two years immediately prior to the date upon which they are filed; otherwise they are barred by the statute. Claims filed with the Commission on or before August 28, 1907, are not affected by the two years' limitation in the Act. The Commission will not take jurisdiction of or recognize its jurisdiction over any claim for reparation or damages which is barred by the statute of limitations, as herein interpreted, and the Commission will not recognize the right of a carrier to waive the limitation provisions of the statute."

If the effect of the above ruling of the Commission is to give all claims at least two years, regardless of when they accrued, then said two-year limitation must be given a retroactive effect and made to apply to claims accrued before the Act. All claims for damages arise prior to the passage of the Act or subsequent thereto. The first clause requires all complaints to be filed within two years from the time the cause of action accrues, and this provision might have been construed to have a retroactive effect and barred all those existing claims which had not accrued within two years next preceding the date of the passage of the Act, had it not been for the enactment of the proviso. The proviso has a twofold effect: (a) to save all existing claims for one year; (b) to make it clear that the first clause was not intended to act retrospectively and apply to existing claims, but was to operate prospectively on claims thereafter accruing. The proviso becomes a substitute for any retroactive effect that might be attributed to the first paragraph. To give the first clause a retroactive effect and allow accrued claims two years would conflict di-

rectly and irreconcilably with the proviso. The statute must be interpreted so that all parts of it may take effect and harmonize if possible. If the subject-matter of legislation has been covered by a direct enactment (as has been done by limiting accrued claims to one year), this supersedes any legislation of doubtful interpretation or indirect application to the same subject-matter; that is to say, the two years' limitation can never be applied to accrued claims because the law expressly applies the one-year limitation to that class. All provisions of uncertain meaning must be subordinated to direct and specific enactments. Statutes are to be construed to have a prospective operation unless a contrary intention in the legislature is manifest and plain. *Murdock v. Franklin Ins. Co.*, 33 W. Va. 407.

Laws should never be considered as applying to cases which arose previously to their passage, unless the legislature has clearly declared such to be their intention. *Bouvier*, p. 918.

Statutes of limitation must be construed to operate prospectively only, unless their terms clearly indicate a different intent. *Uckisson v. Davenport*, 83 Mich. 211.

The case of the *United States Fidelity & Guaranty Co. v. United States for the use and benefit of Struthers Wells Co.*, 209 U. S. 537, decided April 6, 1908, seems to be conclusive of this doctrine.

"There are certain principles which have been adhered to with great strictness by the courts in relation to the construction of statutes, as to whether they are or are not retroactive in their effect. The presumption is very strong that a statute was not meant to act retrospectively, and it ought never to receive such a construction if it is susceptible of any other. It ought not to receive such a construction unless the words used are so clear, strong, and imperative that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied. *Dash v. Van Kleeck*, 7 Johns. 499; 5 Am. Dec. 291; *Jackson ex dem. Hicks v. Van Zandt*, 12 Johns. 169; *United States v. Heth*, 3 Cranch, 399, 414; 2 L. ed. 479, 484; *Southwestern Coal & Improv. Co. v. McBride*, 185 U. S. 499, 503; 46 L. ed., 1010, 1012; 22 Sup. Ct. Rep. 763; *United States v. American Sugar Ref. Co.*, 202 U. S. 563, 577; 50 L. ed., 1149, 1152; 26 Sup. Ct. Rep. 717." *Herrick v. Boquillas &c.*, 200 U. S. 96.

The limitation provided in the statute is therefore applicable to two classes of claims, viz. (a) accrued claims; (b) those thereafter accruing, leaving the meaning of the statute to be that all claims which had accrued prior to the passage of the Act must be presented to the Commission within one year from the passage of the Act, and that all claims accrued subsequent to the passage of the Act shall be

filed with the Commission within two years from the time the cause of action accrues.

The general purpose of a proviso is to except the clause covered by it from the general provisions of a statute or from some provision of it, or to qualify the operation of the statute in some particular. *Georgia Banking Co. v. Smith*, 128 U. S. 181.

Effective Date of Act. The legislative intent was to make the effective date of the Hepburn Act August 28, 1906. *Nicola, Stone & Myers Co. v. L. & N. Ry.*, 14 I. C. C. 199.

The statute of limitations does not cease to run against the demand until a complaint has been filed setting up the claim with sufficient particularity to make an issue. The complaint must name the members on whose behalf it is filed and specify and describe the shipments as to which complaint is made. *Missouri and Kansas Shippers' Asso. v. A., T. & S. F. Ry.*, 13 I. C. C. 411.

Commission May Grant Rehearings—Application for Rehearing Shall not Operate as Stay of Proceedings, Unless so Ordered by Commission—Commission May, on Rehearing, Reverse, Change, or Modify Order

SEC. 16a. (*Added June 29, 1906.*) That after a decision, order, or requirement has been made by the Commission in any proceeding any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any carrier from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order.

Interstate Commerce Commission—~~Form of Procedure~~—Parties May Appear Before the Commission in Person or by Attorney—Official Seal

SEC. 17. (*As amended March 2, 1889.*) That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before said Commission and be heard, in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations and sign subpoenas.

Salaries of Commissioners—Secretary—How Appointed; Salary—Employees—Offices and Supplies—Witnesses' Fees

SEC. 18. (*As amended March 2, 1889.*) (*See Section 24, increasing salaries of Commissioners.*) That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the judges of the courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties. Until otherwise provided by law, the Commission may hire suitable offices for its use, and shall have authority to procure all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

Expenses of the Commission—How Paid

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission.

Principal Office of the Commission—Sessions of the Commission—Commission May Prosecute Inquires by One or More of Its Members in Any Part of the United States

SEC. 19. That the principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public or the parties may be promoted, or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this Act.

Carriers Subject to Act, and Owners of Railroads Engaged in Interstate Commerce Must Render Full Annual Reports to Commission; and Commission Is Authorized to Prescribe Manner in Which Reports Shall be Made and Require Specific Answers to all Questions—What Reports of Carriers Shall Contain—Commission May Prescribe Uniform System of Accounts and Manner of Keeping Accounts

SEC. 20. (*As amended June 29, 1906.*) That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act, and from the owners of all railroads engaged in interstate commerce as defined in this Act; to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the accidents to passengers, employees, and other persons, and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts affecting the same as the Commission may require; and the Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, prescribe a period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Annual Reports to be Filed with Commission by September 30 of Each Year—Commission May Grant Additional Time—Punishment by Forfeiture for Failure to File—Commission May Require Filing of Monthly and Special Reports

Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, and shall be made out under oath and filed with the Commission, at its office in Washington, on or before the thirtieth day of September then next following, unless additional time be granted in any case by the Commission; and if any carrier, person, or corpora-

tion subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such parties shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The Commission shall also have authority to require said carriers to file monthly reports of earnings and expenses or special reports within a specified period, and if any such carrier shall fail to file such reports within the time fixed by the Commission it shall be subject to the forfeitures last above provided.

Punishment by Forfeiture for Failure to File Special Reports

Said forfeitures shall be recovered in the manner provided for the recovery of forfeitures under the provisions of this Act.

Oath to Annual Reports, How Taken

The oath required by this section may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

Commission May Prescribe Forms of Accounts, Records, and Memoranda, and Have Access Thereto—Carrier Cannot Keep Other Accounts Than Those Prescribed by Commission—Commission May Employ Special Examiner to Inspect Accounts and Records

The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this Act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees.

Punishment of Carrier by Forfeiture for Failure to Keep Accounts or Records as Prescribed by Commission or Allow Inspection of Accounts or Records

In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, and memoranda as are kept to the

inspection of the Commission or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this Act.

Punishment of Person for False Entry in Accounts or Records, or Mutilation of Accounts or Records, or for Keeping Other Accounts Than Those Prescribed by Commission—Fine or Imprisonment or Both

Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars, or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment.

Punishment of Special Examiner Who Divulges Facts or Information Without Authority—Fine or Imprisonment or Both

Any examiner who divulges any fact or information which may come to his knowledge during the course of such examination, except in so far as he may be directed by the Commission or by a court or judge thereof, shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than five thousand dollars or imprisonment for a term not exceeding two years, or both.

United States Courts May Issue Mandamus to Compel Compliance With Provisions of Act

That the circuit and district courts of the United States shall have jurisdiction, upon the application of the Attorney-General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said Act to regulate commerce or of any Act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said Acts, or any of them.

Commission May Employ Special Agents or Examiners to Administer Oaths, Examine Witnesses, and Receive Evidence

And to carry out and give effect to the provisions of said Acts, or

any of them, the Commission is hereby authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence.

Receiving Common Carrier Liable for Loss or Damage on Through Shipments Carried by it or by Any Connection, Irrespective of Contract to Contrary—Remedies Under Existing Law not Barred

That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: *Provided*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

Initial Carrier May Have Recourse Upon Carrier Responsible for Loss or Damage

That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof.

Reports. Railroads lying wholly within a State transporting freight on local bills of lading under a special contract limited to its own line, and without dividing charges with any other carriers or assuming any other obligations to or for them, does not have to file reports with the Commission. *I. C. C. v. Chicago &c.*, 81 Fed. R. 783; *I. C. C. v. Belleaire &c.*, 77 Fed. R. 942.

If operating wholly within a State but engaged in interstate commerce, it must file reports. *Leonard v. K. C. S. Ry.*, 13 I. C. C. 573; *I. C. C. v. Seaboard &c.*, 82 Fed. R. 563; *Baer Bros v. Mo. Pac. Ry.*, 13 I. C. C. 329.

Mandamus. The Circuit Court has no original jurisdiction to issue a writ of mandamus at the instance of the Commission against a carrier to compel it to make a report. *I. C. C. v. Lake Shore & M. S.*, 197 U. S. 536. See Amended Act, June 29, 1906, whereby jurisdiction is conferred.

Liability of Carriers for Loss or Damage. In the absence of congressional legislation, a State may require common carriers, although in the execution of interstate business, to be liable for the whole loss resulting from his own negligence, a contract to the contrary notwithstanding. *Penna. Ry. Co. v. Hughes*, 191 U. S. 477.

The statute providing that the initial carrier shall be liable for loss sustained beyond the terminus of its line upon a bill of lading limiting liability of the initial carrier for loss on its own line held constitutional. *Smeltzer v. St. Louis and San Francisco Ry.*, 158 Fed. R. 649 (Arkansas, decided Feb. 29, 1908).

Bills of Lading. This subject was maturely considered by the Commission, and on June 27, 1908, its report and order was issued and a uniform bill of lading recommended.

Released Rates. Under this heading the Commission has issued an administrative interpretation of that part of Sec. 20 which deals with the liability of carriers upon the idea that the validity of so-called "Released Rates" is dependent upon its solution.

I. If a rate is conditioned upon the shipper's assuming the risk of loss due to causes beyond the carrier's control, the condition is valid.

- (a) The carrier is to a large extent an insurer of the goods intrusted to it for carriage, and generally speaking is liable for all losses not occasioned by the act of God or the public enemy. But the carrier's right to relieve itself to some extent from this complete responsibility by special agreement or notice has long been recognized. It may strip itself of its insurer's liability and remain responsible only for its negligence and other misconduct.
- (b) The carrier's right in this respect has not been abrogated by the said provisions of Sec. 20.
- (c) The carrier is liable for loss or damage *caused* by it, but it cannot possibly be extended to cover losses due to causes beyond the carrier's control.
- (d) The law places no restriction upon the carrier's efforts to exempt itself from liability for losses which occur without fault on its part.

II. If a rate is conditioned upon the shipper's assuming the entire risk of loss, the condition is void as against loss due to the carrier's negligence or other misconduct.

- (a) It is against public policy for a carrier to exempt itself from responsibility for its negligence or misconduct.
- (b) A stipulation that a shipment is carried at "owner's risk"

will be upheld as to losses due to causes beyond the carrier's control, but the provision is entirely void as against loss due to the carrier's negligence or misconduct.

III. Rates conditioned upon the shipper's agreeing that the carrier's liability shall be limited to a certain specified value.

(a) Where loss is due to causes beyond the carrier's control, the stipulation limiting liability to a designated value is valid.

(aa) A carrier has an undoubted right to exempt itself from responsibility for losses which it does not cause.

(bb) There is no legal obstacle in the way of a reasonable stipulation limiting the amount which the shipper can recover under the same circumstances.

(b) When the shipper has placed upon his goods a specific value, the carrier accepting the same in good faith as their real value, the rate of freight being fixed in accordance therewith, the shipper cannot recover an amount in excess of the value he has disclosed, even when loss is caused by the carrier's negligence.

(aa) The contract will be upheld as a proper and lawful mode of securing a true proportion between the amount for which the carrier may be responsible and the freight it received and of protecting itself against extravagant and fanciful valuations.

(bb) If the shipper is guilty of fraud or concealment or imposition by misrepresenting the nature or value of the articles he destroys his claim to indemnity, because he has attempted to deprive the carrier of the right to be compensated in proportion to the value of the articles and the consequent risk assumed, and what he has done has tended to lessen the vigilance the carrier would otherwise have bestowed.

(cc) The compensation for carriage is based on that value. The shipper is estopped from saying that the value is greater.

(c) If the specified amount does not purport to be an agreed valuation, but represents an attempt on the part of the carrier to limit the amount of recovery to a fixed sum, irrespective of the actual value, the stipulation is void as against loss due to the carrier's negligence or other misconduct.

(aa) Carrier cannot have the benefit of an estoppel because it has not acted in good faith, nor has it been the victim of misrepresentation.

(d) If the specified amount, while purporting to be an agreed valuation, is in fact purely fictitious and represents an attempt to limit the carrier's liability to an arbitrary amount, liability for the full value cannot be escaped in event of loss due to negligence.

(aa) Where there is an "agreed valuation" which both know to be grossly disproportionate to the true value, the agreement is not *bona fide*, and the shipper can recover the real value of the goods.

(bb) The agreement fixing value, in order to be conclusive on the owner, must be *bona fide* and the value reasonable.

(cc) The knowledge which the carrier has of the real value of the goods tendered to him for shipment would, therefore, seem to be material in determining the effect of the valuation agreement upon its liability.

(dd) Where the value agreed upon is so out of harmony with the ordinary values of similar kinds of goods as to indicate that the question of value did not, in fact, enter into the agreement, and the carrier, under the circumstances, must have known of the discrepancy, the agreement placing a value on the goods will be considered as a mere attempt by the carrier to secure a partial exemption from liability and of no effect in relieving him from the obligation of responsibility for their real value where his misconduct has occasioned their loss.

(ee) In the absence of fraud or concealment on the part of the owner of the goods whereby the carrier has been misled, the valuation agreed upon, it is said, must be reasonable, regard being had to the real value of the goods, and if such value be unreasonable, the owner will not be estopped from claiming damages on the basis of their real value.

From a further consideration of this case the following propositions are deducible:

(a) That exemptions claimed by carriers must be reasonable and just, otherwise they will be regarded as extorted from the customers by duress of circumstances, and, therefore, not binding.

(b) That all attempts of carriers by general notices or special con-

tract to escape from liability for losses to shippers, or injuries to passengers, resulting from want of care or faithfulness, cannot be regarded as reasonable and just, but as contrary to a sound public policy, and, therefore, invalid.

- (c) The law will not permit a carrier to stipulate against the consequences of its negligence, either wholly or in part. A stipulation cannot attain validity merely because it appears in the guise of a fictitious agreed valuation.
- (d) Sec. 20 expressly invalidates all stipulations designed to limit liability for losses caused by the carrier and it cannot escape liability for full value in event of loss due to its own negligence or other misconduct, except in the single instance where the shipper has misled the carrier by his misrepresentation or concealment of value and estopped himself from recovering more than the value he has disclosed.
- (e) A carrier may lawfully establish a scale of charges applicable to a specific commodity, and graduated reasonably according to value.
- (f) When the insurance risk is enlarged by reason of increased value of the goods intrusted to it, it may provide for a reasonable increase in its charges.
- (g) A carrier may provide a higher rating for goods of special value than it applies to goods of the same class but of lower value.
- (h) The law affords complete protection against the frauds and misrepresentations of the shipper.
- (i) The provisions of tariffs and bills of lading should be fair and unambiguous and free from suspicion of illegality.
- (j) The shipper should be allowed his choice of rates which leave the carrier's liability unlimited as at common law, or lower rates based upon such a limited liability as the law sanctions.
- (k) A certain differential between rates which leave the carrier's liability unlimited, and rates which provide for a limited liability, is obviously proper, but the differential should exactly measure the additional insurance risk which the carrier assumes when the liability is unlimited.
- (l) It is a mischievous practice for carriers to publish in their tariffs and on their bills of lading rules and regulations which are misleading, unreasonable, or incapable of literal enforcement in a court of law. In *re Released Rates*, 13 I. C. C. 550. See *Inman & Co. v. Seaboard Air Line Ry.*, 159 Fed. R. 960.

Prompt Settlement Required. The State of South Carolina

enacted a statute that common carriers shall adjust and pay claims for loss or damage to property within forty days in case of shipments wholly within the State, and failure to adjust and pay the claims within the time specified shall subject the carrier to a penalty of \$50 for each offense, to be recovered in the courts.

Held, the Act is constitutional and does not impose a penalty for the nonpayment of debts. Small shipments especially need the protection of penal statutes. The claimant can afford to litigate where a large amount is claimed, but he cannot do so when a trifle is involved, yet justice requires his claim be adjusted and paid with reasonable promptness. The purpose of the legislation is to compel the performance of duties which the carrier assumes when it enters upon the discharge of its public functions. *Seaboard &c. Ry. v. Seegers*, 207 U. S. 73.

Annual Reports of the Commission to Congress

SEC. 21. (*As amended March 2, 1889.*) That the Commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission.

Persons and Property That May be Carried Free or at Reduced Rates—

Mileage, Excursion, or Commutation Passenger Tickets—Passes and Free Transportation to Officers and Employees of Railroad Companies—Provisions of Act Are in Addition to Remedies Existing at Common Law—Pending Litigation not Affected by Act—Joint Interchangeable Five-thousand-mile Tickets—Amount of Free Baggage—Publication of Rates—Sale of Tickets—Penalties

SEC. 22. (*As amended March 2, 1889, and February 8, 1895.*) (*See section 1, 4th par.*) That nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, state, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this Act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the National Homes or State Homes for

Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this Act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this Act: *Provided further*, That nothing in this Act shall prevent the issuance of joint interchangeable five-thousand-mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier, subject to the provisions of this Act, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section six of this Act; and all the provisions of said section six relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said section six. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time. The provisions of section ten of this Act shall apply to any violation of the requirements of this proviso.

In regard to that clause of this section which provides that "*Nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies,*" the court has said that "This clause, however, cannot in reason be construed as continuing in shippers a common law right, the continued existence of which would be absolutely inconsistent with the provisions of the Act. In other words, the Act cannot be held to destroy itself. The clause is concerned alone with rights recognized in or duties imposed by the

Act, and the manifest purpose of the provision in question was to make plain the intention that any specific remedy given by the Act should be regarded as cumulative, when other appropriate common law or statutory remedies existed for the redress of the particular grievance or wrong dealt with in the Act." *Texas &c. Ry. v. Abilene Cotton Oil Co.*, 204 U. S. 446.

Jurisdiction of United States Courts to Issue Writs of Peremptory Mandamus Commanding the Movement of Interstate Traffic or the Furnishing of Cars or Other Transportation Facilities—Peremptory Mandamus May Issue, Notwithstanding Proper Compensation of Carrier May be Undetermined—Remedy Cumulative, and Shall not Interfere with Other Remedies Provided by the Act

SEC. 23. NEW SECTION. (*Added March 2, 1889.*) That the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the Act to which this is a supplement and all Acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this Act or the Act to which it is a supplement.

Mandamus. Must make out unjust discrimination in order to authorize a mandamus, and this must be proved by relator, otherwise writ of mandamus will be denied. U. S. v. Del. &c. Ry., 40 Fed. R. 101; U. S. v. Norfolk, 109 Fed. R. 831; U. S. v. Norfolk, 114 Fed. R. 682; Burnham v. Fields, 157 Fed. R. 246.

Commission to Consist of Seven Members; Terms; Salaries—Qualifications and Enlargement of Commission

SEC. 24. (*Added June 29, 1906.*) That the Interstate Commerce Commission is hereby enlarged so as to consist of seven members with terms of seven years, and each shall receive ten thousand dollars compensation annually. The qualifications of the Commissioners and the manner of the payment of their salaries shall be as already provided by law. Such enlargement of the Commission shall be accomplished through appointment by the President, by and with the advice and consent of the Senate, of two additional Interstate Commerce Commissioners, one for a term expiring December thirty-first, nineteen hundred and eleven, one for a term expiring December thirty-first, nineteen hundred and twelve. The terms of the present Commissioners, or of any successor appointed to fill a vacancy caused by the death or resignation of any of the present Commissioners, shall expire as heretofore provided by law. Their successors and the successors of the additional Commissioners herein provided for shall be appointed for the full term of seven years, except that any person appointed to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed. Not more than four Commissioners shall be appointed from the same political party.

Existing Laws as to Attendance of Witnesses and Production of Evidence Applicable in Proceedings Under This Act

SEC. 25. (*Additional provisions in Act of June 29, 1906, SEC. 9.*) That all existing laws relating to the attendance of witnesses and the production of evidence and the compelling of testimony under the Act to regulate commerce and all Acts amendatory thereof shall apply to any and all proceedings and hearings under this Act.

Conflicting Laws Repealed—Amendments not to Affect Pending Causes in Court

SEC. 26. (SEC. 10. New Act.) That all laws and parts of laws in conflict with the provisions of this Act are hereby repealed; but the amendments herein provided for shall not affect causes now pending in courts of the United States, but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

For effect of this section, see *U. S. v. D., L. & W. Ry. Co.*, 152 Fed. R. 270; *U. S. v. New York Central & H. R. Ry. Co.*, 153 Fed. R. 630. See note to *U. S. v. R. R. Downing & Co.*, 76 C. C. A. 381. Construed, *Great Northern Railway v. United States*, 208 U. S. 452.

When Act Effective

SEC. 27. (SEC. 11. New Act.) That this Act shall take effect and be in force from and after its passage.

Time of Taking Effect Extended Sixty Days (August 28, 1906)

Joint resolution of June 30, 1906, provides: "That the act entitled 'An act to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission,' shall take effect and be in force sixty days after its approval by the President of the United States."

CHAPTER III

THE "ELKINS ACT," TOGETHER WITH A DIGEST OF SOME OF THE DECISIONS OF THE FEDERAL COURTS RELATING THERETO

An Act to Further Regulate Commerce with Foreign Nations and Among the States

Carrier Corporation as Well as Officer or Agent Liable to Conviction for Misdemeanor—Penalty—Failure of Carrier to Publish Rates or Observe Tariffs a Misdemeanor—Penalty, Fine—Misdemeanor to Offer, Grant, Give, Solicit, Accept, or Receive any Rebate From Published Rates or Other Concession or Discrimination—Penalty, Fine or Imprisonment, or Both—Judicial District in Which Cases May Be Prosecuted

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SEC. 1. (As amended June 29, 1906.) That anything done or omitted to be done by a corporation common carrier, subject to the act to regulate commerce and the acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said acts or under this act, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said acts or by this act with reference to such persons, except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said acts to file and publish the tariffs or rates and charges as required by said acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said act to regulate commerce and the acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper,

who shall, knowingly, offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars: *Provided*, That any person, or any officer or director of any corporation subject to the provisions of this act, or the act to regulate commerce and the acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

Act of Officer or Agent to Be Also Deemed Act of Carrier—Rates Filed or Participated in by Carrier Shall, as Against Such Carrier, Be Deemed Legal Rate

In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier, or shipper, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or shipper as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the act to regulate commerce or acts amendatory thereof, or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under this act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this act.

Forfeiture, in Addition to Other Prescribed Penalty, of Three Times Amount of Money and Value of Consideration Illegally Received Shall Be Paid to the United States—Attorney-General to Collect Such Forfeiture by Civil Action—Period Covered to Be Six Years Prior to Commencement of Action

Any person, corporation, or company who shall deliver property for interstate transportation to any common carrier, subject to the provisions of this act, or for whom, as consignor or consignee, any such carrier shall transport property from one State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or foreign country, who shall knowingly by em-

ployee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in this act, shall in addition to any penalty provided by this act forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and the Attorney-General of the United States is authorized and directed, whenever he has reasonable grounds to believe that any such person, corporation, or company has knowingly received or accepted from any such common carrier any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the United States of competent jurisdiction a civil action to collect the said sum or sums so forfeited as aforesaid; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

Persons Interested in Matters Involved in Cases Before Interstate Commerce Commission or Circuit Court May Be Made Parties and Shall Be Subject to Orders or Decrees

SEC. 2. That in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the Interstate Commerce Commission or be begun originally in any circuit court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

Proceedings to Enjoin or Restrain Departures From Published Rates or Any Discrimination Prohibited by Law Against Carriers and Parties Interested in Traffic—Such Proceedings Shall not Prevent Actions for Recovery of Damages or Other Action Authorized by Act to Regulate Commerce or Amendments Thereof—Compulsory Attendance and Testimony of Witnesses and Production of Books and Papers—Immunity to Testifying Witnesses—Expediting Act of February 11, 1903, to Apply in Cases Prosecuted Under Direction of Attorney-General in Name of Interstate Commerce Commission

SEC. 3. That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged

in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in either such judicial district or State, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs, and process, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law. It shall be the duty of the several district attorneys of the United States, whenever the Attorney-General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by this act shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said act approved February fourth, eighteen hundred and eighty-seven, entitled "An act to regulate commerce and the acts amendatory thereof." And in proceedings under this act and the acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in such proceeding: *Provided*, That the provisions of an act entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three," shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission.

Conflicting Laws Repealed

SEC. 4. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed, but such repeal shall not affect causes now pending, nor rights which have already accrued, but such causes shall be prosecuted to a conclusion and such rights enforced in a manner heretofore provided by law and as modified by the provisions of this act.

SEC. 5. That this act shall take effect from its passage.

Public, No. 103, approved February 19, 1903.

Rebates. The giving or receiving of rebates is a continuous crime. *Armour Packing Co. v. United States*, 153 Fed. R. 1; *United States v. Standard Oil Co.*, 155 Fed. R. 305; *United States v. Great Northern Ry.*, 157 Fed. R. 288; *Armour &c. v. United States*, 209 U. S. 56; *United States v. N. Y. Cent. & H. R. Ry.*, 157 Fed. R. 293; *C., B. & Q. Ry. v. United States*, 157 Fed. R. 830; *United States v. Vacuum Oil Co.*, 158 Fed. R. 536; *Camden Iron Works v. United States*, 158 Fed. R. 561.

Tariffs of Import and Export Rates Must Be Filed and Published.

Supra.

Indictment for Rebating. *United States v. New York Central R. R. Co.*, 146 Fed. R. 298; *U. S. v. New York Central*, 153 Fed. R. 630.

What Indictment Must State. *Armour Packing Co. v. United States*, 153 Fed. R. 1, 630; *U. S. v. Delaware &c.*, 152 Fed. R. 269; *United States v. Central V. Ry.*, 157 Fed. R. 291.

Effect of the Repealing Clause in the Hepburn Act. *United States v. Delaware, L. & W. R. Co.*, 152 Fed. R. 270; *United States v. New York Central & H. R. Ry.*, 153 Fed. R. 630; see note to *United States v. Downing & Co.*, 76 C. C. A. 381; *United States v. Great Northern Ry.*, 157 Fed. R. 288.

The only criminal intent requisite to a conviction of an offense created by statute, which is not *malum in se*, is the purpose to do the act in violation of the statute. No moral turpitude or wicked intent is essential to a conviction of such crime. *Armour Packing Co. v. United States*, 153 Fed. R. 1; *Great Northern Ry. v. United States*, 208 U. S. 452.

Statutory law enters into and forms a part of contracts.

Contracts to maintain established rates illegal. *New Haven & Hartford R. R. Co. v. I. C. C.*, 200 U. S. 361; *Armour Packing Co. v. United States*, 153 Fed. R. 1.

A law imposing excessive fines and penalties is unconstitutional. *Ex parte Young* (Minnesota Rate Case), 209 U. S. 123.

CHAPTER IV

IMMUNITY STATUTES

An Act in Relation to Testimony Before the Interstate Commerce Commission, and in Cases or Proceedings Under or Connected with an Act Entitled "An Act to Regulate Commerce," Approved February Fourth, Eighteen Hundred and Eighty-seven, and Amendments Thereto

Attendance and Testimony of Witnesses and Production of Documentary Evidence Compulsory Before the Commission, and in any Case, Criminal or Otherwise, in the Courts—Immunity to Testifying Witnesses—Perjury Excepted

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements, and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the Commission, whether such subpoena be signed or issued by one or more Commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the act of Congress, entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or of any amendment thereof on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding: *Provided,* That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Penalties: Fine or Imprisonment, or Both

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements, and documents, if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than one

hundred dollars nor more than five thousand dollars, or by imprisonment for not more than one year or by both such fine and imprisonment.

Public, No. 54, approved February 11, 1893.

An Act Defining the Right of Immunity of Witnesses Under the Act Entitled "An Act in Relation to Testimony Before the Interstate Commerce Commission," and so Forth, Approved February Eleventh, Eighteen Hundred and Ninety-three, and an Act Entitled "An Act to Establish the Department of Commerce and Labor," Approved February Fourteenth, Nineteen Hundred and Three, and an Act Entitled "An Act to Further Regulate Commerce with Foreign Nations and Among the States," Approved February Nineteenth, Nineteen Hundred and Three, and an Act Entitled "An Act Making Appropriations for the Legislative, Executive, and Judicial Expenses of the Government for the Fiscal Year Ending June Thirtieth, Nineteen Hundred and Four, and for Other Purposes," Approved February Twenty-fifth, Nineteen Hundred and Three

Immunity Extends Only to Natural Persons Who Give Testimony Under Subpœna

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That under the immunity provisions in the Act entitled "An Act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, in section six of the Act entitled "An Act to establish the Department of Commerce and Labor," approved February fourteenth, nineteen hundred and three, and in the Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and in the Act entitled "An Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," approved February twenty-fifth, nineteen hundred and three, immunity shall extend only to a natural person who, in obedience to a subpœna, gives testimony under oath or produces evidence, documentary or otherwise, under oath.

Public, No. 389, approved June 30, 1906.

See also Sections 9 and 12 of the Act to Regulate Commerce and the "Elkins Act," Section 3, *infra*.

CHAPTER V

An Act to Expedite the Hearing and Determination of Suits in Equity Pending or Hereafter Brought Under the Act of July Second, Eighteen Hundred and Ninety, Entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," "An Act to Regulate Commerce," Approved February Fourth, Eighteen Hundred and Eighty-seven, or any Other Acts Having a Like Purpose That May be Hereafter Enacted

Expedition of Cases—Hearing Before Three Judges—Review by Supreme Court on Certificate

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in any suit in equity pending or hereafter brought in any circuit court of the United States under the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney-General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said circuit, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select. In the event the judges sitting in such case shall be divided in opinion, the case shall be certified to the Supreme Court for review in like manner as if taken there by appeal as hereinafter provided.

Appeal to Supreme Court—Exception

SEC. 2. That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the circuit court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof: *Provided*, That in any case where

an appeal may have been taken from the final decree of a circuit court to the circuit court of appeals before this act takes effect, the case shall proceed to a final decree therein, and an appeal may be taken from such decree to the Supreme Court in the manner now provided by law.

Public, No. 82, approved February 11, 1903.

CHAPTER VI

THE SAFETY APPLIANCE ACTS

An Act to Promote the Safety of Employees and Travelers upon Railroads by Compelling Common Carriers Engaged in Interstate Commerce to Equip Their Cars with Automatic Couplers and Continuous Brakes and Their Locomotives with Driving-wheel Brakes, and for Other Purposes

Driving-wheel and Train Brakes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system, or to run any train in such traffic after said date that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose.

Automatic Couplers

SEC. 2. That on and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any such common carrier to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

When Carriers May Lawfully Refuse to Receive Cars From Connecting Lines or Shippers

SEC. 3. That when any person, firm, company, or corporation engaged in interstate commerce by railroad shall have equipped a sufficient number of its cars so as to comply with the provisions of section one of this act, it may lawfully refuse to receive from connecting lines of road or shippers any cars not equipped sufficiently, in accordance with the first section of this act, with such power or train brakes as will work and readily interchange with the brakes in use on its own cars, as required by this act.

Grab Irons and Handholds

SEC. 4. That from and after the first day of July, eighteen hundred and ninety-five, until otherwise ordered by the Interstate Commerce Commission, it shall be unlawful for any railroad company to use any car in interstate commerce that is not provided with secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars.

Standard Height of Drawbars for Freight Cars

SEC. 5. That within ninety days from the passage of this act the American Railway Association is authorized hereby to designate to the Interstate Commerce Commission the standard height of drawbars for freight cars, measured perpendicular from the level of the tops of the rails to the centers of the drawbars, for each of the several gauges of railroads in use in the United States, and shall fix a maximum variation from such standard height to be allowed between the drawbars of empty and loaded cars. Upon their determination being certified to the Interstate Commerce Commission, said Commission shall at once give notice of the standard fixed upon to all common carriers, owners, or lessees engaged in interstate commerce in the United States by such means as the Commission may deem proper. But should said association fail to determine a standard as above provided, it shall be the duty of the Interstate Commerce Commission to do so, before July first, eighteen hundred and ninety-four, and immediately to give notice thereof as aforesaid. And after July first, eighteen hundred and ninety-five, no cars, either loaded or unloaded, shall be used in interstate traffic which do not comply with the standard above provided for.

Penalty for Violation of the Provisions of This Act—Duty of United States District Attorney—Duty of Interstate Commerce Commission Exceptions to the Act

SEC. 6. (*As amended April 1, 1896.*) That any such common carrier using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line any car in violation of any of the provisions of this act, shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred; and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge: *Provided*, That nothing in this act contained shall apply to trains composed of four-wheel cars or to trains composed of eight-wheel standard logging cars where the height of such car from top of rail

to center of coupling does not exceed twenty-five inches, or to locomotives used in hauling such trains, when such cars or locomotives are exclusively used for the transportation of logs.

Power of Interstate Commerce Commission to Extend Time of Carriers to Comply with This Act

SEC. 7. That the Interstate Commerce Commission may from time to time upon full hearing and for good cause extend the period within which any common carrier shall comply with the provisions of this act.

Employees not Deemed to Assume Risk of Employment

SEC. 8. That any employee of any such common carrier who may be injured by any locomotive, car, or train in use contrary to the provision of this act shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employment of such carrier after the unlawful use of such locomotive, car, or train had been brought to his knowledge.

Public, No. 113, approved March 2, 1893, amended April 1, 1896.

NOTE.—Prescribed standard height of drawbars: Standard-gauge roads, 34½ inches; narrow-gauge roads, 26 inches; maximum variation between loaded and empty cars, 3 inches.

An Act to Amend an Act Entitled "An Act to Promote the Safety of Employees and Travelers upon Railroads by Compelling Common Carriers Engaged in Interstate Commerce to Equip Their Cars with Automatic Couplers and Continuous Brakes and Their Locomotives with Driving-wheel Brakes, and for Other Purposes," Approved March Second, Eighteen Hundred and Ninety-three, and Amended April First, Eighteen Hundred and Ninety-six

Safety Appliance Act of March 2, 1893, as Amended by Act of April 1, 1896, Shall Apply in Territories and District of Columbia—Provisions of Safety Appliance Acts as to Couplers Shall Apply in all Cases When Couplers Are Brought Together—Safety Appliance Acts Shall Apply to all Equipment of Any Railroad Engaged in Interstate Commerce—Exceptions

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions and requirements of the act entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes, and their locomotives with driving-wheel brakes, and for other purposes," approved March second, eighteen hundred and ninety-three, and amended April first, eighteen

hundred and ninety-six, shall be held to apply to common carriers by railroads in the Territories and the District of Columbia and shall apply in all cases, whether or not the couplers brought together are of the same kind, make, or type; and the provisions and requirements hereof and of said acts relating to train brakes, automatic couplers, grab irons, and the height of drawbars shall be held to apply to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce, and in the Territories and the District of Columbia, and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith, excepting those trains, cars, and locomotives exempted by the provisions of section six of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six, or which are used upon street railways.

Power or Train Brakes on not Less Than Fifty Per Cent of Cars in Trains Shall Be Used and Operated—Commission May Increase Minimum Percentage of Power or Train Brake Cars to Be Used—Penalty

SEC. 2. That whenever, as provided in said act, any train is operated with power or train brakes, not less than fifty per centum of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing such train; and all power-braked cars in such train which are associated together with said fifty per centum shall have their brakes so used and operated; and, to more fully carry into effect the objects of said act, the Interstate Commerce Commission may, from time to time, after full hearing, increase the minimum percentage of cars in any train required to be operated with power or train brakes which must have their brakes used and operated as aforesaid; and failure to comply with any such requirement of the said Interstate Commerce Commission shall be subject to the like penalty as failure to comply with any requirement of this section.

Act Effective September 1, 1903—Provisions, Powers, Duties, Requirements, and Liabilities Specified in Act of March 2, 1893, and Act of April 1, 1896, Apply to This Act

SEC. 3. That the provisions of this act shall not take effect until September first, nineteen hundred and three. Nothing in this act shall be held or construed to relieve any common carrier, the Interstate Commerce Commission, or any United States district attorney from any of the provisions, powers, duties, liabilities, or requirements of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six; and all of the provisions, powers, duties, requirements, and liabilities of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six, shall, except as specifically amended by this act, apply to this act.

Public, No. 133, approved March 2, 1903.

An Act to Grant the Right of Way Through the Oklahoma Territory and the Indian Territory to the Enid and Anadarko Railway Company, and for Other Purposes.

* * * * *

Approval by Commission of Interlocking or Automatic Signals at Crossings—Common Grade Crossings

SEC. 18. That when in any case two or more railroads crossing each other at a common grade shall, by a system of interlocking or automatic signals, or by any works or fixtures to be erected by them, render it safe for engines and trains to pass over such crossing without stopping, and such interlocking or automatic signals or works or fixtures shall be approved by the Interstate Commerce Commissioners, then, in that case, it is hereby made lawful for the engines and trains of such railroad or railroads to pass over such crossing without stopping, any law or the provisions of any law to the contrary notwithstanding; and when two or more railroads cross each other at a common grade, either of such roads may apply to the Interstate Commerce Commissioners for permission to introduce upon both of said railroads some system of interlocking or automatic signals or works or fixtures rendering it safe for engines and trains to pass over such crossings without stopping, and it shall be the duty of said Interstate Commerce Commissioners, if the system of works and fixtures which it is proposed to erect by said company are, in the opinion of the Commission, sufficient and proper, to grant such permission.

Notice of Intent to Use Signals at Crossings—Division of Costs

SEC. 19. That any railroad company which has obtained permission to introduce a system of interlocking or automatic signals at its crossing at a common grade with any other railroad, as provided in the last section, may, after thirty days' notice, in writing, to such other railroad company, introduce and erect such interlocking or automatic signal or fixtures; and if such railroad company, after such notification, refuses to join with the railroad company giving notice in the construction of such works or fixtures, it shall be lawful for said company to enter upon the right of way and tracks of such second company, in such manner as to not unnecessarily impede the operation of such road, and erect such works and fixtures, and may recover in any action at law from such second company one half of the total cost of erecting and maintaining such interlocking or automatic signals or works or fixtures on both of said roads.

* * * * *

Public, No. 26, approved February 28, 1902.

Ash Pan Act**An Act to Promote the Safety of Employees on Railroads**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That on and after the first day of January, nineteen hundred and ten, it shall be unlawful for any common carrier engaged in interstate or foreign commerce by railroad to use any locomotive in moving interstate or foreign traffic, not equipped with an ash pan, which can be dumped or emptied and cleaned without the necessity of any employee going under such locomotive.

SEC. 2. That on and after the first day of January, nineteen hundred and ten, it shall be unlawful for any common carrier by railroad in any Territory of the United States or the District of Columbia to use any locomotive not equipped with an ash pan, which can be dumped or emptied and cleaned without the necessity of any employee going under such locomotive.

SEC. 3. That any such common carrier using any locomotive in violation of any of the provisions of this Act shall be liable to a penalty of two hundred dollars for each and every such violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred; and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge.

SEC. 4. That it shall be the duty of the Interstate Commerce Commission to enforce the provisions of this Act, and all powers heretofore granted to said Commission are hereby extended to it for the purpose of the enforcement of this Act.

SEC. 5. That the term "common carrier" as used in this Act shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier.

SEC. 6. That nothing in this Act contained shall apply to any locomotive upon which, by reason of the use of oil, electricity, or other such agency, an ash pan is not necessary.

Approved May 30, 1908.

Purpose of Act. The manifest purpose of the amended safety appliance law is that all freight cars shall be equipped with air brakes, and that all brakes shall be used and operated, and such condition is necessary to the safety of both railway employees and the traveling public, besides facilitating traffic movement and resulting in the handling of traffic with greater economy. It was held that the mini-

imum percentage of air-braked freight cars in trains on railroads used in interstate commerce shall stand increased to 75 per cent on and after August 1, 1906. In *Re Power of Train Brakes*, 11 I. C. C. 429.

The Act is Constitutional. The Safety Appliance Act, approved March 2, 1893 amended April 1, 1896, is not in conflict with the Constitution of the United States. *Winkler v. P. & R. Ry.*, 53 Atlantic Rep. 90; *United States v. A. C. L. Ry.*, 153 Fed. R. 918; 196 U. S. 1; 205 U. S. 1; *St. L., I. M. & So. v. Taylor*, 210 U. S. 281.

Allegations Unnecessary. In stating a cause of action to recover a penalty under the Safety Appliance Acts, it is not necessary that there be an allegation that the acts complained of were intentionally and willfully done. *United States v. El Paso S. Ry.*, D. C. Arizona, 2d Dist., Jan. 30, 1907.

Joint and Several Liability. In a joint action against two or more carriers to recover the statutory penalty specified in the Safety Appliance Acts, judgment may be rendered against any one of the defendants when the proof shows that such defendant has violated that statute. *United States v. C. P. & St. L. Ry.*, 143 Fed. R. 353; *Chaffee v. United States*, 18 Wall. 518, 538.

Interstate Commerce is the Test. The transportation of articles of interstate commerce is the test of the application of these acts. *United States v. Col. & N. W. Ry.*, 157 Fed. R. 321, 342.

Statutes Changing the Common Law. A statute changing the common law modifies or abrogates it no further than the clear import of its language necessarily requires.

A statute which enumerates the parties, things, or acts which it denounces thereby impliedly excludes all others from its effect.

When the language of a statute is unambiguous and its meaning is plain, it must be held to mean, and the legislative body must be held to have intended, what it plainly expresses, and no room is left for construction.

Cars loaded with articles shipped to other States, and started, whether in yards or on side tracks or in trains, are used in moving interstate traffic. But vacant cars in yards, on side tracks, in repair shops, or in trains which are not loaded with or in use to move articles of interstate commerce, do not fall within the terms or meaning of the Act of March 2, 1893. *Johnson v. So. Pac. Co.*, 117 Fed. R. 462; 196 U. S. 1; *United States v. No. Pac. Terminal Co. of Oregon*, 144 Fed. R. 861; *United States v. Col. & N. W. Ry.*, 157 Fed. R. 321, 342.

Switching Movements. The acts apply to cars while being used in a switching movement. *United States v. P. C. & St. L. Ry.*, 143

Fed. R. 360; *United States v. Union Stock Yards Co. of Omaha*, D. C. Nebraska, Feb. 21, 1908.

Liberal Construction Should Be Given Act. The legislative intent was to secure "the safety of employees." The Act should be given such a construction as will accomplish the purpose for which it was intended. The Act is so highly meritorious, so generous in its purpose, so in harmony with the best sentiment of a humane people and a progressive government, that it appeals strongly to the courts for its prompt and vigorous enforcement. *United States v. So. Ry.*, 135 Fed. R. 122.

Power of Congress Over Interstate Commerce. Congress has power to control the instrumentalities of interstate commerce and to prescribe the rules and regulations which shall apply to common carriers engaged in such commerce. It was under this power that the Congress enacted the safety appliance statutes. *United States v. Gt. Northern Ry.*, 145 Fed. R. 438.

Participating Carriers. Every carrier who transports such goods through any part of such continuous passage is engaged in interstate commerce, whether the goods are carried upon through bills of lading or are rebilled by the several carriers.

Congress may lawfully affect intrastate commerce so far as necessary to regulate effectually and completely interstate commerce. *United States v. Col. & N. W. Ry.*, 157 Fed. R. 321, 342.

Transportation of Articles for Express Companies. The transportation by a common carrier by railroad of articles of interstate commerce for an independent express company is "engaging in interstate commerce by railroad" within the meaning of the Safety Appliance Acts. *United States v. Col. & N. W. Ry.*, 157 Fed. R. 321, 342.

Cars Generally Used in Moving Interstate Traffic. The effect of the amendment of 1903 is to leave no room for distinction between hauling a car actually engaged in interstate commerce and hauling one that is generally used in moving interstate traffic, although not actually so engaged at the time when the offense is charged as being committed. *United States v. Chicago & N. W. Ry.*, 157 Fed. R. 616.

Where Repairs Should Be Made. Repairs that can be made without the necessity of taking the cars to a repair shop should be made during the journey, but repairs that cannot be so made should be done at the nearest repair shop in course of transit. Carriers cannot for their convenience carry defective cars by one repair shop to another. *United States v. Ill. Cent. Ry.*, 156 Fed. R. 182.

Definition of "Car." The word "car," in Sec. 2 of the Act of

March 2, 1893, amended April 1, 1896, relates to all kinds of cars running on the rails, including locomotives and steam shovel cars. *Schlemmer v. B., R. & P. Ry.*, 205 U. S. 1; *Johnson v. So. Pac. Co.*, 196 U. S. 1.

Each Coupler Must Be Operative. The Act requires that each coupler on a car be operative in itself, so that an employee will not have to go to another car to uncouple the car in question. *United States v. Wabash Ry., D. C. for E. D. of Illinois*, Nov. 19, 1907.

Use of Chains Unlawful. The use of chains to fasten cars in lieu of automatic couplers is unlawful. *United States v. C., M. & St. P.*, 149 Fed. R. 486; *United States v. St. L., I. M. & So., D. C. for W. D. of Tenn.* decided June 11, 1907.

Law not Unconstitutional as a Delegation of Legislative Power. The law authorizing the American Railway Association and the Interstate Commerce Commission to designate and promulgate the standard height and maximum variation of drawbars for freight cars is not unconstitutional as a delegation of legislative power. *St. L. & I. M. Ry. v. Taylor*, 210 U. S. 281.

Reasonable Care, no Defense. Reasonable care to equip and maintain safety appliances in condition required by statute is no defense to an action based on a violation of the Act. *St. L. & I. M. Ry. v. Taylor*, 210 U. S. 281.

Switching Companies Subject to Act. The character of the switching business performed by the Union Stock Yards Company of Omaha, makes it a common carrier engaged in interstate commerce, and brings it within the Safety Appliance Acts. *United States v. Union Stock Yards Company of Omaha, D. C. Nebraska*, Feb. 21, 1908.

Lading of Cars Wholly Immaterial. If a car is one that is regularly used in the movement of interstate traffic, and is at the time involved in the movement of a train containing interstate traffic, the lading of the car is wholly immaterial. *United States v. Wheeling and L. E. Ry., D. C. Northern Dist. of Ohio*, Jan. 16, 1908.

Evidence in a State Court. Violation of Act may be considered by a jury in a state court on question of negligence of carrier.

Cars of Other Roads Must Be Equipped. Carrier cannot haul cars of other roads unless equipped under the statute.

Applies to Cars Being Made Up in Yard. The Act applies to cars being made up in the yard as well as when they are actually moving in interstate commerce. *Crawford v. N. Y. C. & H. R. Ry.*, 10 Am. Neg. Rep. 166; *United States v. C., M. & St. P. Ry.*, 149 Fed. R. 486; *United States v. Phil. & Read. Ry.*, 160 Fed. R. 696.

Applies to Empty Cars. The Act applies to cars designed for interstate traffic, though at the time being hauled empty.

Equipment Must Be Kept in Order. Carriers must not allow equipment to become worn out and inoperative. *Johnson v. So. Pac. Co.*, 196 U. S. 1; *Voelker v. C., M. & St. P. Ry.*, 129 Fed. R. 522; *United States v. Gt. No. Ry.*, 150 Fed. R. 229; *United States v. L. & N. Ry.*, 156 Fed. R. 193, 195; *United States v. Wheeling & L. E. Ry.*, D. C. Northern Dist. of O., Jan. 16, 1908.

Railroad Must Note Defective Couplers. Railroads must ascertain for themselves and at their peril whether or not they haul cars with defective couplers. *United States v. So. Ry.*, 135 Fed. R. 122; *United States v. Phil. & Read. Ry.*, 160 Fed. R. 696.

Proceedings, not Criminal Actions. Proceedings to recover statutory penalties are not criminal actions, but a suit of a civil nature.

Duties of Inspectors. Inspectors are not required to inform carriers of defective equipment.

As to when and where repairs should be made during the time when a car is being moved.

A carrier is required to know, at his peril, that all cars moved by it must be properly equipped.

Car Hauled Wholly Within a State. The fact that a car is hauled wholly within a State is not material if in the same train the carrier hauls other cars loaded with interstate traffic. *United States v. Chicago G. W. Ry.*, D. C. Northern Dist. of Iowa, May 6, 1908; *United States v. L. & N. Ry.*, 156 Fed. R. 193, 195.

State or Interstate Commerce. All commerce of the United States is under control of either a State or of the nation, and it cannot be justly claimed that any of such commerce falls within the power of neither, and when merchandise is carried from one State into another, no system or scheme can be devised to make it intrastate traffic.

The undoubted purpose of Congress in enacting the safety appliance laws was humanitarian, and such statutes should not be frittered away by judicial construction. *United States v. C., M. & St. P.*, 149 Fed. R. 486.

Act Is a Remedial Statute. The Safety Appliance Act is a remedial statute and must be so construed to accomplish the intent of Congress. *United States v. Central of Ga. Ry.*, 157 Fed. R. 893; *Johnson v. So. Pac. Co.*, 196 U. S. 1.

Knowledge of Offense. Knowledge is not an element of an offense under the Safety Appliance Act. *United States v. C., B. & Q. Ry.*, 156 Fed. R. 180.

Equipment on Each End Must Be Operative. The equipment

on each end of the cars must be in such condition that whenever called upon for use it can be operated without the necessity of men going between the ends of the cars. *United States v. Central of Ga. Ry.*, 157 Fed. 893.

An intrastate belt railroad which accepts for transfer between different trunk lines cars loaded with interstate traffic, is subject to the Safety Appliance Act, even though its rails lie wholly within the confines of a single State.

Interstate commerce begins as soon as an article starts to move from one State to another, and every carrier conveying it is engaged in moving interstate commerce. *United States v. Belt Railway of Chicago*, D. C. Northern Dist. of Illinois, Jan. 23, 1908.

CHAPTER VII

An Act Requiring Common Carriers Engaged in Interstate Commerce to Make Full Reports of all Accidents to the Interstate Commerce Commission

Monthly Reports of Railway Accidents

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, It shall be the duty of the general manager, superintendent, or other proper officer of every common carrier engaged in interstate commerce by railroad to make to the Interstate Commerce Commission, at its office in Washington, District of Columbia, a monthly report, under oath, of all collisions of trains or where any train or part of a train accidentally leaves the track, and of all accidents which may occur to its passengers or employees while in the service of such common carrier and actually on duty, which report shall state the nature and causes thereof, and the circumstances connected therewith.

Failure to Make Report Within Thirty Days After End of Any Month a Misdemeanor—Penalty

SEC. 2. That any common carrier failing to make such report within thirty days after the end of any month shall be deemed guilty of a misdemeanor and, upon conviction thereof by a court of competent jurisdiction, shall be punished by a fine of not more than one hundred dollars for each and every offense and for every day during which it shall fail to make such report after the time herein specified for making the same.

Reports Not to Be Used in Evidence Against the Carrier

SEC. 3. That neither said report nor any part thereof shall be admitted as evidence or used for any purpose against such railroad so making such report in any suit or action for damages growing out of any matter mentioned in said report.

Form of Report

SEC. 4. That the Interstate Commerce Commission is authorized to prescribe for such common carriers a method and form for making the reports in the foregoing section provided.

Public, No. 171, approved March 3, 1901.

CHAPTER VIII

An Act to Promote the Safety of Employees and Travelers upon Railroads by Limiting the Hours of Service of Employees Thereon

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act shall apply to any common carrier or carriers, their officers, agents, and employees, engaged in the transportation of passengers or property by railroad in the District of Columbia or any Territory of the United States, or from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States. The term "railroad" as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "employees" as used in this Act shall be held to mean persons actually engaged in or connected with the movement of any train.

SEC. 2. That it shall be unlawful for any common carrier, its officers or agents subject to this Act, to require or permit any employee subject to this Act to be or remain on duty for a longer period than sixteen consecutive hours, and whenever any such employee of such common carrier shall have been continuously on duty for sixteen hours he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such employee who has been on duty sixteen hours in the aggregate in any twenty-four-hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty: *Provided*, That no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places, and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period on not exceeding three days in any week: *Provided further*, The Interstate Commerce Commission may after full hearing in a particular case and for good cause

shown extend the period within which a common carrier shall comply with the provisions of this proviso as to such case.

SEC. 3. That any such common carrier, or any officer or agent thereof, requiring or permitting any employee to go, be, or remain on duty in violation of the second section hereof, shall be liable to a penalty of not to exceed five hundred dollars for each and every violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such suits upon satisfactory information being lodged with him; but no such suit shall be brought after the expiration of one year from the date of such violation; and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge. In all prosecutions under this Act the common carrier shall be deemed to have had knowledge of all acts of all its officers and agents: *Provided*, That the provisions of this Act shall not apply in any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time said employee left a terminal, and which could not have been foreseen: *Provided further*, That the provisions of this Act shall not apply to the crews of wrecking or relief trains.

SEC. 4. It shall be the duty of the Interstate Commerce Commission to execute and enforce the provisions of this Act, and all powers granted to the Interstate Commerce Commission are hereby extended to it in the execution of this Act.

SEC. 5. That this Act shall take effect and be in force one year after its passage.

Approved March 4, 1907, 11:50 A. M.

The Georgia Southern & Florida Railway Company, on January 15, 1908, filed its petition for an extension of time under the proviso clause of the second section. It was held that the petition did not show "good cause" because it sets forth no exceptional or peculiar conditions which render observance impracticable at any of the stations, and the Commission have no authority to postpone the taking effect of the Act merely because compliance with its provisions will involve inconvenience and financial hardship. To extend the time would practically nullify the law during the period of postponement as to a large percentage of the employees for whose benefit the law was enacted, and presumably deprive the traveling public of the added safeguard against accident which the law was designed to secure. It is clear that the authority of the Commission to grant an extension was intentionally limited to instances of special and unforeseen conditions. It was not contemplated that conditions

which are common and well known and so frequently found on every railway as to comprise a recognized class, should be regarded as a sufficient basis for administrative relief. We perceive nothing in the facts here presented to justify or authorize a relieving order, and the petition must be denied. Decided February 14, 1908 (13 I. C. C. 134).

CHAPTER IX

THE ARBITRATION ACT

An Act Concerning Carriers Engaged in Interstate Commerce and Their Employees

Adjustment of Controversies Between Railroads and Their Employees —Scope of Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this act shall apply to any common carrier or carriers and their officers, agents, and employees, except masters of vessels and seamen, as defined in section forty-six hundred and twelve, Revised Statutes of the United States, engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any place in the United States.

Terms— " Railroad "— " Transportation "

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

" Employees "—Street Railroads Excepted—Responsibility of Carrier on Leased Cars

The term "employees" as used in this act shall include all persons actually engaged in any capacity in train operation or train service of any description, and notwithstanding that the cars upon or in which they are employed may be held and operated by the carrier under lease or other contract: *Provided, however,* That this act shall not be held to apply to employees of street railroads and shall apply only to employees engaged in railroad train service. In every such case the carrier shall be responsible for the acts and defaults of such employees in the same manner and to the same

extent as if said cars were owned by it and said employees directly employed by it, and any provisions to the contrary of any such lease or other contract shall be binding only as between the parties thereto and shall not affect the obligations of said carrier either to the public or to the private parties concerned.

Chairman of Interstate Commerce Commission and Commissioner of Labor to Mediate Differences

SEC. 2. That whenever a controversy concerning wages, hours of labor, or conditions of employment shall arise between a carrier subject to this act and the employees of such carrier, seriously interrupting or threatening to interrupt the business of said carrier, the chairman of the Interstate Commerce Commission and the Commissioner of Labor shall, upon the request of either party to the controversy, with all practicable expedition, put themselves in communication with the parties to such controversy, and shall use their best efforts, by mediation and conciliation, to amicably settle the same; and if such efforts shall be unsuccessful, shall at once endeavor to bring about an arbitration of said controversy in accordance with the provisions of this act.

Failure to Adjust—Board to Arbitrate—How Selected—Controversies Affecting Different Labor Organizations—Third Arbitrator—Form of Submission

SEC. 3. That whenever a controversy shall arise between a carrier subject to this act and the employees of such carrier which cannot be settled by mediation and conciliation in the manner provided in the preceding section, said controversy may be submitted to the arbitration of a board of the three persons, who shall be chosen in the manner following: One shall be named by the carrier or employer directly interested; the other shall be named by the labor organization to which the employees directly interested belong, or, if they belong to more than one, by that one of them which specially represents employees of the same grade and class and engaged in services of the same nature as said employees so directly interested: *Provided, however,* That when a controversy involves and affects the interests of two or more classes and grades of employees belonging to different labor organizations, such arbitrator shall be agreed upon and designated by the concurrent action of all such labor organizations; and in cases where the majority of such employees are not members of any labor organization, said employees may by a majority vote select a committee of their own number, which committee shall have the right to select the arbitrator on behalf of said employees. The two thus chosen shall select a third commissioner of arbitration; but, in the event of their failure to name such arbitrator within five days after their first meeting, the third arbitrator shall be named by the commissioners named in the preceding section. A majority of said arbitrators shall be competent to make a valid and binding award under the

provisions hereof. The submission shall be in writing, shall be signed by the employer and by the labor organization representing the employees, shall specify the time and place of meeting of said board of arbitration, shall state the questions to be decided, and shall contain appropriate provisions by which the respective parties shall stipulate, as follows:

Stipulations of Submission—Time of Hearings—Status of Controversy Pending Arbitration—Involuntary Service

First. That the board of arbitration shall commence their hearings within ten days from the date of the appointment of the third arbitrator, and shall find and file their award, as provided in this section, within thirty days from the date of the appointment of the third arbitrator; and that pending the arbitration the status existing immediately prior to the dispute shall not be changed: *Provided*, That no employee shall be compelled to render personal service without his consent.

Filing of Award in the United States Circuit Court

Second. That the award and the papers and proceedings, including the testimony relating thereto certified under the hands of the arbitrators and which shall have the force and effect of a bill of exceptions, shall be filed in the clerk's office of the circuit court of the United States for the district wherein the controversy arises or the arbitration is entered into, and shall be final and conclusive upon both parties, unless set aside for error of law apparent on the record.

Enforcing Award—Involuntary Service

Third. That the respective parties to the award will each faithfully execute the same, and that the same may be specifically enforced in equity so far as the powers of a court of equity permit: *Provided*, That no injunction or other legal process shall be issued which shall compel the performance by any laborer against his will of a contract for personal labor or service.

Notice of Termination of Service

Fourth. That employees dissatisfied with the award shall not by reason of such dissatisfaction quit the service of the employer before the expiration of three months from and after the making of such award without giving thirty days' notice in writing of their intention so to quit. Nor shall the employer dissatisfied with such award dismiss any employee or employees on account of such dissatisfaction before the expiration of three months from and after the making of such award without giving thirty days' notice in writing of his intention so to discharge.

Continuance in Force of Award—Individual Employees not Parties not Bound by Award

Fifth. That said award shall continue in force as between the parties thereto for the period of one year after the same shall go into practical operation, and no new arbitration upon the same subject between the same employer and the same class of employees shall be had until the expiration of said one year if the award is not set aside as provided in section four. That as to individual employees not belonging to the labor organization or organizations which shall enter into the arbitration, the said arbitration and the award made therein shall not be binding, unless the said individual employees shall give assent in writing to become parties to said arbitration.

Exceptions to Award

SEC. 4. That the award being filed in the clerk's office of a circuit court of the United States, as hereinbefore provided, shall go into practical operation, and judgment shall be entered thereon accordingly at the expiration of ten days from such filing, unless within such ten days either party shall file exceptions thereto for matter of law apparent upon the record, in which case said award shall go into practical operation and judgment be entered accordingly when such exceptions shall have been finally disposed of either by said circuit court or on appeal therefrom.

Appeal to Circuit Court of Appeals—Record

At the expiration of ten days from the decision of the circuit court upon exceptions taken to said award, as aforesaid, judgment shall be entered in accordance with said decision unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said exceptions and to be decided.

Judgment

The determination of said circuit court of appeals upon said questions shall be final, and being certified by the clerk thereof to said circuit court, judgment pursuant thereto shall thereupon be entered by said circuit court.

Judgment by Agreement

If exceptions to an award are finally sustained, judgment shall be entered setting aside the award. But in such case the parties may agree upon a judgment to be entered disposing of the subject-matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Powers of Arbitration

SEC. 5. That for the purposes of this act the arbitrators herein provided for, or either of them, shall have power to administer oaths and affirmations, sign subpoenas, require the attendance and testimony of witnesses, and the production of such books, papers, contracts, agreements, and documents material to a just determination of the matters under investigation as may be ordered by the court; and may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements and documents to the same extent and under the same conditions and penalties as is provided for in the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, and the amendments thereto.

Agreement to Arbitrate—Filing of Agreement in Office of Interstate Commerce Commission

SEC. 6. That every agreement of arbitration under this act shall be acknowledged by the parties before a notary public or clerk of a district or circuit court of the United States, and when so acknowledged a copy of the same shall be transmitted to the chairman of the Interstate Commerce Commission, who shall file the same in the office of said Commission.

Agreement of Individual Employees to Arbitrate—Meeting to Be Called—Condition

Any agreement of arbitration which shall be entered into conforming to this act, except that it shall be executed by employees individually instead of by a labor organization as their representative, shall, when duly acknowledged as herein provided, be transmitted to the chairman of the Interstate Commerce Commission, who shall cause a notice in writing to be served upon the arbitrators, fixing a time and place for a meeting of said board, which shall be within fifteen days from the execution of said agreement of arbitration: *Provided, however,* That the said chairman of the Interstate Commerce Commission shall decline to call a meeting of arbitrators under such agreement unless it be shown to his satisfaction that the employees signing the submission represent or include a majority of all employees in the service of the same employer and of the same grade and class, and that an award pursuant to said submission can justly be regarded as binding upon all such employees.

Restrictions on Parties During Pendency of Arbitration—After Award—Penalty—Reduction of Force for Business Reasons

SEC. 7. That during the pendency of arbitration under this act it shall not be lawful for the employer, party to such arbitration, to discharge the employees, parties thereto, except for inefficiency,

violation of law, or neglect of duty; nor for the organization representing such employees to order, nor for the employees to unite in, aid, or abet, strikes against said employer; nor, during a period of three months after an award under such an arbitration, for such employer to discharge any such employees, except for the causes aforesaid, without giving thirty days' written notice of an intent so to discharge; nor for any of such employees, during a like period, to quit the service of said employer without just cause, without giving to said employer thirty days' written notice of an intent so to do; nor for such organization representing such employees to order, counsel, or advise otherwise. Any violation of this section shall subject the offending party to liability for damages: *Provided*, That nothing herein contained shall be construed to prevent any employer, party to such arbitration, from reducing the number of its or his employees whenever in its or his judgment business necessities require such reduction.

National Trade Unions—Forfeiture of Membership for Violence—Liabilities—Appearance of Corporations in Arbitration Proceedings

SEC. 8. That in every incorporation under the provisions of chapter five hundred and sixty-seven of the United States Statutes of eighteen hundred and eighty-five and eighteen hundred and eighty-six it must be provided in the articles of incorporation and in the constitution, rules, and by-laws that a member shall cease to be such by participating in or by instigating force or violence against persons or property during strikes, lockouts, or boycotts, or by seeking to prevent others from working through violence, threats, or intimidations. Members of such incorporations shall not be personally liable for the acts, debts, or obligations of the corporations, nor shall such corporations be liable for the acts of members or others in violation of law; and such corporations may appear by designated representatives before the board created by this act, or in any suits or proceedings for or against such corporations or their members in any of the Federal courts.

Railroads in Hands of Federal Receiver—Employees to Be Heard—Notice of Reduction of Wages

SEC. 9. That whenever receivers appointed by Federal courts are in possession and control of railroads, the employees upon such railroads shall have the right to be heard in such courts upon all questions affecting the terms and conditions of their employment, through the officers and representatives of their associations, whether incorporated or unincorporated, and no reduction of wages shall be made by such receivers without the authority of the court therefor upon notice to such employees, said notice to be not less than twenty days before the hearing upon the receivers' petition or application, and to be posted upon all customary bulletin boards along or upon the railway operated by such receiver or receivers.

**Prohibition of Unjust Requirements as Conditions to Employment—
Attempts to Prevent Further Employment After Discharge—Penalty**

SEC. 10. That any employer subject to the provisions of this act and any officer, agent, or receiver of such employer who shall require any employee, or any person seeking employment, as a condition of such employment, to enter into an agreement, either written or verbal, not to become or remain a member of any labor corporation, association, or organization; or shall threaten any employee with loss of employment, or shall unjustly discriminate against any employee because of his membership in such a labor corporation, association, or organization; or who shall require any employee or any person seeking employment, as a condition of such employment, to enter into a contract whereby such employee or applicant for employment shall agree to contribute to any fund for charitable, social, or beneficial purposes; to release such employer from legal liability for any personal injury by reason of any benefit received from such fund beyond the proportion of the benefit arising from the employer's contribution to such fund; or who shall, after having discharged an employee, attempt or conspire to prevent such employee from obtaining employment, or who shall, after the quitting of an employee, attempt or conspire to prevent such employee from obtaining employment, is hereby declared to be guilty of a misdemeanor, and, upon conviction thereof in any court of the United States of competent jurisdiction in the district in which such offense was committed, shall be punished for each offense by a fine of not less than one hundred dollars and not more than one thousand dollars.

Appropriation for Expenses of Arbitration

SEC. 11. That each member of said board of arbitration shall receive a compensation of ten dollars per day for the time he is actually employed, and his traveling and other necessary expenses; and a sum of money sufficient to pay the same, together with the traveling and other necessary and proper expenses of any conciliation or arbitration had hereunder, not to exceed ten thousand dollars in any one year, to be approved by the chairman of the Interstate Commerce Commission and audited by the proper accounting officers of the Treasury, is hereby appropriated for the fiscal years ending June thirtieth, eighteen hundred and ninety-eight, and June thirtieth, eighteen hundred and ninety-nine, out of any money in the Treasury not otherwise appropriated.

Repeal

SEC. 12. That the act to create boards of arbitration or commission for settling controversies and differences between railroad corporations and other common carriers engaged in interstate or territorial transportation of property or persons and their em-

ployees, approved October first, eighteen hundred and eighty-eight, is hereby repealed.

Public, No. 115, approved June 1, 1898.

Tenth Section of Act of June 1, 1898, Declared Unconstitutional.

May Congress make it a criminal offense against the United States—as by the tenth section of the Act it does—for an agent or officer of an interstate carrier, having full authority from the carrier, to discharge an employee from service simply because of his membership in a labor organization?

The first inquiry is whether the part of the tenth section of the Act of June 1, 1898, upon which the first count of the indictment was based, is repugnant to the Fifth Amendment of the Constitution, declaring that no person shall be deprived of liberty or property without due process of law. In our opinion, that section in the particular mentioned is an invasion of the personal liberty, as well as of the right of property, guaranteed by that amendment.

We hold that there is no such connection between interstate commerce and membership in a labor organization as to authorize Congress to make it a crime against the United States for an agent of an interstate carrier to discharge an employee because of such membership on his part. If such a power exists in Congress, it is difficult to perceive why it might not by absolute regulation require interstate carriers, under penalties, to employ in the conduct of its interstate business *only* members of labor organizations, or *only* those who are not members of such organizations,—a power which could not be recognized as existing under the Constitution. No such rule of criminal liability can be regarded as a regulation of interstate commerce. The power to regulate commerce cannot be exerted in violation of any fundamental right secured by other provisions of the Constitution.

It results that the provision of the statute under which the defendant was convicted must be held to be repugnant to the Fifth Amendment, and as not embraced by nor within the power of Congress to regulate interstate commerce, but, under the guise of regulating interstate commerce, and as applied to this case, it arbitrarily sanctions an illegal invasion of the personal liberty as well as the right of property of the defendant, Adair. Since this part of the Act of 1898 is severable from the other parts, and we are not called upon to consider other and independent provisions of the Act, this decision is restricted to the question of validity of the particular provision in the Act of Congress making it a crime against the United States for

an agent or officer of an interstate carrier to discharge an employee from its service because of his being a member of a labor organization. *Adair v. United States*, 208 U. S. 161.

For a construction of the general provisions of the Act, see *In re Southern Pac. Co.*, 155 Fed. R. 1001.

CHAPTER X

THE MEDAL ACTS

An Act to Promote the Security of Travel upon Railroads Engaged in Interstate Commerce, and to Encourage the Saving of Life

Life-saving on Railroads—Medals of Honor for—Proviso—Proof

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby, authorized to cause to be prepared bronze medals of honor, with suitable emblematic devices, which shall be bestowed upon any persons who shall hereafter, by extreme daring, endanger their own lives in saving, or endeavoring to save, lives from any wreck, disaster, or grave accident, or in preventing or endeavoring to prevent such wreck, disaster or grave accident, upon any railroad within the United States engaged in interstate commerce: *Provided,* That no award of said medal shall be made to any person until sufficient evidence of his deserving shall have been furnished and placed on file, under such regulations as may be prescribed by the President of the United States.

Rosettes and Ribbons—Proviso—Issue of New Ribbons

SEC. 2. That the President of the United States be, and he is hereby, authorized to issue to any person to whom a medal of honor may be awarded under the provisions of this Act a rosette or knot, to be worn in lieu of the medal, and a ribbon to be worn with the medal; said rosette or knot and ribbon to be each of a pattern to be prescribed by the President of the United States: *Provided,* That whenever a ribbon issued under the provisions of this Act shall have been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was issued, a new ribbon shall be issued to such person without charge therefor.

Payment of Expenses

SEC. 3. That the appropriations for the enforcement and execution of the provisions of the Acts to promote the safety of employees and travelers upon railroads are hereby made available for carrying out the provisions of this Act.

Public, No. 98, approved February 23, 1905.

Regulations Governing the Award of Life-saving Medals Under the Foregoing Act

Made by the President of the United States on March 29, 1905

1. Applications for medals under this act should be addressed to and filed with the Interstate Commerce Commission, at the city of Washington, D. C. Satisfactory evidence of the facts upon which the applicataion is based must be filed in each case. This evidence should be in the form of affidavits made by eyewitnesses, of good repute and standing, testifying of their own knowledge. The opinion of witnesses that the person for whom an award is sought acted with extreme daring and endangered his life is not sufficient, but the affidavits must set forth the facts in detail and show clearly in what manner and to what extent life was endangered and extreme daring exhibited. The railroad upon which the incident occurred, the date, time of day, condition of the weather, the names of all persons present when practicable, and other pertinent circumstances should be stated. The affidavits should be made before an officer duly authorized to administer oaths and be accompanied by the certificate of some United States official of the district in which the affiants reside, such as a judge or clerk of United States court, district attorney, or postmaster, to the effect that the affiants are reputable and credible persons. If the affidavits are taken before an officer without an official seal his official character must be certified by the proper officer of a court of record under the seal thereof.

2. Applications for medals, together with all affidavits and other evidence received in connection therewith, shall be referred to a committee of five persons, consisting of the secretary of the Commission, the chief inspector of safety appliances, two inspectors of safety appliances designated by the Commission, and the clerk of the safety-appliance examining board, who shall act as clerk of the committee. This committee shall carefully consider each application presented and, after thoroughly weighing the evidence, shall prepare an abstract or brief covering the case and file the same, together with the committee's recommendation, with the Commission, which brief and recommendation shall be transmitted by the Commission to the President for his approval. The committee may, with the approval of the Commission, direct any inspector of safety appliances in the employ of the Commission to proceed to the locality where the service was performed for which a medal is claimed, and make a personal investigation and report upon the facts of the case, which report shall be filed and made a part of the evidence considered by the committee.

3. Upon final approval of the committee's recommendation by the President the commission shall take such measures to carry the recommendation into effect as the President may direct.

4. The Commission shall cause designs to be prepared for the medal, rosette, and ribbon provided for by the act, which designs shall be submitted to the President for his approval.

CHAPTER XI

DISTRICT OF COLUMBIA STREET RAILWAY ACT

Approved May 23, 1908

An Act Authorizing Certain Extensions to Be Made of the Lines of the Anacostia and Potomac River Railroad Company, the Washington Railway and Electric Company, the City and Suburban Railway of Washington, and the Capital Traction Company, in the District of Columbia, and for Other Purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Anacostia and Potomac River Railroad Company be, and it is hereby, authorized and directed to construct a double-track connection with its tracks on E street south, thence northwardly along First street east to East Capitol street, there to connect with the tracks of the Washington Railway and Electric Company; also a double-track extension from Delaware avenue and C street northeastwardly along Delaware avenue to the plaza in front of the Union Station, together with a double-track loop located as near as may be to the exterior circumference of said plaza and passing in front of and near to the Union Station; also a double-track connection with existing tracks on G street near New Jersey avenue northwest and thence eastwardly to and along Massachusetts avenue, with such northerly deviations as may be necessary to bring the tracks immediately in front of and adjacent to the main entrance of the Union Station, to junctions with an existing track at Third and D streets northeast and at the northwest corner of Stanton square.

SEC. 2. That the City and Suburban Railway of Washington be, and it is hereby, authorized and directed to extend its double tracks on North Capitol street southwardly from the intersection of G street to Massachusetts avenue, there to connect with the tracks hereinbefore authorized on Massachusetts avenue.

SEC. 3. That the Capital Traction Company of the District of Columbia be, and it is hereby, authorized and directed to construct and extend, by double tracks, the lines of its underground electric railroad from Florida avenue and Seventh street northwest southeastwardly along Florida avenue to its intersection with Eighth street east, thence southwardly along Eighth street to Pennsylvania avenue, there to connect with existing tracks of the Capital Traction Company; also a double-track extension from the tracks hereinbefore authorized on Florida avenue southeastwardly along New Jersey avenue

152 DISTRICT OF COLUMBIA STREET RAILWAY ACT

to its intersection with Massachusetts avenue and First street west, thence along said Massachusetts avenue southeastwardly to the said plaza, and with such northerly deviations as may be necessary to bring the tracks immediately in front of and adjacent to the main entrance of the Union Station, thence by such route as may be determined by the Commissioners of the District of Columbia to the corner of Second and F streets northeast, thence east on F street north to Eighth street east to connect with the tracks of the Capital Traction Company hereinbefore authorized; also a double-track extension of its lines from Seventh and T streets northwest eastwardly along T street to Florida avenue to connect with the tracks of the Capital Traction Company hereinbefore authorized; also a double-track extension of its lines from C street and Delaware avenue northeast along Delaware avenue to the plaza in front of the Union Station, together with a double-track loop passing in front of the Station on said plaza; also a double-track connection from First and B streets southeast northwardly along First street east to B street north.

SEC. 4. That the companies hereinbefore named be, and they are hereby, permitted to lay duct lines on such streets as may be necessary for the proper operation of their lines, the location of such duct lines to be approved by the Commissioners of the District of Columbia, and the cost thereof and all the other costs and expenses of construction, removal of tracks, repairs, and restoration in this Act mentioned shall be borne and paid solely by said street railway companies and they shall be solely liable for all damages to persons and property occasioned by any construction or work authorized by this Act.

SEC. 5. That the said street railway companies mentioned in this Act be, and they are hereby, authorized and required, within eighteen months from the date of the passage of this Act, and it shall be the duty of each of them, to remove their respective railway tracks and appurtenances from the following streets, and at the time of their removal to repair, restore, and make good in all respects the space now occupied by said railway tracks and appurtenances to the satisfaction and written approval of the Commissioners of the District of Columbia, namely: G street northwest, from North Capitol street to New Jersey avenue; C street north, from First street east to Fourth street east; D street north, from First street east to Massachusetts avenue; First street west, from C street north to G street north; Sixth street west, from Louisiana avenue to B street north, and Louisiana avenue, from Fifth street west to Sixth street west; and upon neglect or refusal of said companies to remove their respective tracks and to repave, repair, restore, and make good said space to the satisfaction of the said Commissioners within the time above limited, any said street railway company so neglecting or refusing shall be deemed guilty of a misdemeanor and shall be subject to the penalty provided in section seven hundred and ten of the Code of Laws for the District of Columbia regarding the removal of abandoned tracks, and said Commissioners are authorized without notice to remove said tracks and to repave the space occupied by same and charge the cost thereof to such railroad company, whatever may be the manner or cost of

doing said work, and to collect the cost thereof in the manner provided in section five of an Act of Congress entitled "An Act to provide a permanent form of government for the District of Columbia," approved June eleventh, eighteen hundred and seventy-eight.

SEC. 6. That the construction of the underground electric street railway lines in this Act hereinbefore mentioned shall be commenced within thirty days and completed on or before May first, nineteen hundred and nine; and in default of such commencement or completion within said time or within the extension of time by this section specified, all corporate rights, franchises, and privileges of any street railway company so in default shall immediately cease and determine: *Provided*, That the Commissioners of the District of Columbia may, for good cause shown in writing, extend the time for completion; but the said Commissioners shall in no case grant such extension for a longer period than six months.

SEC. 7. That where the route or routes provided for in this Act coincide with each other or with the route or routes of existing street railways or street railways hereafter authorized to be operated or constructed, one set of double tracks only shall be constructed and shall be used in common, upon terms mutually agreed upon, or, in case of disagreement, upon terms determined by the supreme court of the District of Columbia, which is authorized and directed to give notice and hearings to the interested parties and to fix and finally determine the terms of the joint trackage: *Provided*, That there shall be two sets of double tracks immediately in front of the main entrance to the Union Station, facing Massachusetts avenue, the most northerly rail being not less than seventy feet from the axis of the south portico of said station.

SEC. 8. That authority is hereby given the Commissioners of the District of Columbia to use such portions of reservation numbered seventy-seven as may in their judgment be necessary for sidewalks and roadways and for street railway use. And authority is hereby given said Commissioners to acquire by purchase or to condemn, in accordance with existing law, for street purposes, so much of square numbered six hundred and twenty-six, lying north of the north building line of square numbered five hundred and sixty-seven, extended, as they may deem necessary, and the cost of acquiring said property as above shall be paid by the Anacostia and Potomac River Railroad Company: *Provided*, That where a portion of any lot is authorized to be acquired as above the said Commissioners may, in their discretion, acquire the entire lot; the portion thereof, when so acquired, lying south of the north building line of square numbered five hundred and sixty-seven, extended, to become the property of said Anacostia and Potomac River Railroad Company as soon as the entire cost of acquisition as above specified shall be paid by it.

SEC. 9. That whenever, in the construction of the new tracks herein authorized, the Commissioners of the District of Columbia deem it necessary, in order to reasonably accommodate vehicular traffic, to widen the roadway of any street or streets in which said track or tracks are to be laid, such widening shall be done by said Commis-

sioners, the cost and expense of such widening, including the laying of new sidewalks, the adjustment of all underground construction, and of every public appurtenance, shall be borne by the railway company constructing such tracks, and the said railway company shall deposit with the collector of taxes of the District of Columbia in advance the estimated cost of changing or widening the said street or streets, the work to be done by said Commissioners; and whenever, at any future time, the Commissioners deem it necessary to widen the roadway of any street or streets occupied by the extensions herein authorized, said railway company shall bear one-half the cost of widening and improving such street or streets, to be collected in the same manner as the cost of laying or repairing pavement lying between the exterior rails of the tracks of said street railroad and for a distance of two feet exterior to such track or tracks is collectible, under the provisions of section five of an Act entitled "An Act to provide a permanent form of government for the District of Columbia," approved June eleventh, eighteen hundred and seventy-eight.

SEC. 10. That whenever in the construction of any of the tracks herein authorized it is necessary, in the opinion of the Commissioners of the District of Columbia, to improve, by paving or otherwise, the roadway of any street occupied by such track or tracks, said company shall adjust the grade of its tracks to the new grade of the street or streets, the cost thereof to be borne by the said company in the same manner as the cost of paving between the exterior of the tracks of the street railroad companies as referred to in the preceding section.

SEC. 11. That the arrangement of all tracks herein authorized within the lines of the plaza in front of the Union Station shall be in accordance with the plans approved by the Commissioners of the District of Columbia, and all work of construction and extension herein authorized shall be executed in accordance with plans to be approved by the Commissioners of the District of Columbia and under a permit or permits from said Commissioners.

SEC. 12. That existing transfer arrangements between the Washington Railway and Electric Company and the Metropolitan Coach Company, a corporation of the District of Columbia, shall not be terminated, except by authority of Congress; and unless said Metropolitan Coach Company shall, within one year after the passage of this Act, substitute motor vehicles to be approved by the Commissioners of the District of Columbia, for the herdies now used by it, its right to operate its line shall cease and determine. *Provided further*, That all transfers issued by the Metropolitan Coach Company shall be properly dated and punched as to time limit as provided by rules and regulations to be made, altered, and amended from time to time by the Interstate Commerce Commission, and that unless said transfers are so dated and punched the Washington Railway and Electric Company shall not be required to receive them.

SEC. 13. That the Anacostia and Potomac River Railroad Company and the Capital Traction Company be, and they are hereby, authorized and required, jointly, to construct, maintain, and operate, by overhead trolley, temporary railway tracks for passenger service from

the Union Station to the intersection of Delaware avenue and C street north, said tracks to be constructed within sixty days from the date of the approval of this Act, in accordance with plans approved by the Commissioners of the District of Columbia, said tracks to be maintained by said companies to the satisfaction of said Commissioners, and to be removed by said companies after the construction of the permanent street railway tracks herein provided for within thirty days after notice from said Commissioners so to do: *Provided*, That the companies herein named may, at their option, substitute permanent underground for temporary overhead construction on Delaware avenue from C street to the southern edge of the plaza, and thence by temporary underground construction to the north line of Massachusetts avenue; such temporary construction to be removed within thirty days from the date of operation of cars over the permanent construction provided for in section one of this Act.

SEC. 14. That the railway companies affected by this Act shall have over and respecting the routes herein provided for, the same rights, powers, and privileges as they respectively have or hereafter may have by law over and respecting their other routes, and shall be subject in respect thereto to all the other provisions of their charters and of law.

SEC. 15. That no transfer ticket or written or printed instrument giving or purporting to give the right of transfer to any person or persons from a public conveyance operated upon one line or route of a street railroad, or from one car to another car upon the line of any street railroad, shall be issued, sold, or given except to a passenger lawfully entitled thereto. Any person who shall issue, sell, or give away such a transfer ticket or instrument as aforesaid to a person or persons not lawfully entitled thereto, and any person or persons not lawfully entitled thereto who shall receive and use or offer for passage any such transfer ticket or instrument to another with intent to have such transfer ticket used or offered for passage shall be punished by a fine not exceeding twenty-five dollars.

SEC. 16. That every street railroad company or corporation owning, controlling, leasing or operating one or more street railroads within the District of Columbia shall on each and all of its railroads supply and operate a sufficient number of cars, clean, sanitary, in good repair, with proper and safe power, equipment, appliances and service, comfortable and convenient, and so operate the same as to give expeditious passage, not to exceed fifteen miles per hour within the city limits or twenty miles per hour in the suburbs, to all persons desirous of the use of said cars, without crowding said cars. The Interstate Commerce Commission is hereby given power to require and compel obedience to all of the provisions of this section, and to make, alter, amend and enforce all needful rules and regulations to secure said obedience; and said Commission is given power to make all such orders and regulations necessary to the exercise of the powers herein granted to it as may be reasonable and proper; and such railroad companies or corporations, their officers and employees, are hereby required to obey all the provisions of this section, and such regulations and orders as may be

made by said Commission. Any such company or corporation, or its officers or employees, violating any provision of this section, or any of the said orders or regulations made by said Commission, or permitting such violation, shall be punished by a fine of not more than one thousand dollars. And each day of failure or neglect on the part of such company or corporation, its officers or employees, to obey each and all of the provisions and requirements of this section, or the orders and regulations of the Commission made thereunder, shall be regarded as a separate offense.

SEC. 17. That prosecutions for violations of any of the provisions of this act shall be on information of the Interstate Commerce Commission filed in the police court by or on behalf of the Commission.

SEC. 18. That Congress reserves the right to alter, amend, or repeal this Act.

Approved May 23, 1908.

CHAPTER XII

An Act to Promote the Safe Transportation in Interstate Commerce of Explosives and Other Dangerous Articles, and to Provide Penalties for its Violation

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful to transport, carry, or convey any dynamite, gunpowder, or other explosive between a place in any foreign country and a place within the United States, or a place in any State, Territory, or District of the United States, and a place in any other State, Territory, or District thereof, on any vessel or vehicle of any description operated by a common carrier, which vessel or vehicle is carrying passengers for hire: Provided, That it shall be lawful to transport on any such vessel, or vehicle, small arms ammunition in any quantity, and such fuses, torpedoes, rockets, or other signal devices as may be essential to promote safety in operation, and properly packed and marked samples of explosives for laboratory examination, not exceeding a net weight of one-half pound each, and not exceeding twenty samples at one time in a single vessel or vehicle; but such samples shall not be carried in that part of a vessel or vehicle which is intended for the transportation of passengers for hire: And provided further, That nothing in this section shall be construed to prevent the transportation of military or naval forces with their accompanying munitions of war on passenger equipment vessels or vehicles.

SEC. 2. That within ninety days from the passage of this Act the Interstate Commerce Commission shall formulate regulations for the safe transportation of explosives, and said regulations shall be binding upon all common carriers engaged in interstate commerce which transport explosives by land, and violations of them shall be subject to the penalties hereinafter provided. The Interstate Commerce Commission, on its own motion or upon application made by any interested party, may make changes or modifications of the regulations for the safe transportation of explosives, made desirable by new information or altered conditions, and such changed regulations shall have all the force of the original regulations. The regulations for the safe transportation of explosives referred to in this section shall be in accord with the best known practicable means for securing safety in transit, covering the packing, marking, loading, handling while in transit, and the precautions necessary to determine whether the material when offered is in proper condition to transport. The regulations for the safe transportation of explosives shall take effect three months after their formulation and publica-

tion by the Interstate Commerce Commission, and shall be in effect until reversed, set aside, or modified.

SEC. 3. That it shall be unlawful to transport, carry, or convey liquid nitroglycerine, fulminate in bulk in dry condition, or other like explosive between a place in a foreign country and a place within the United States, or a place in one State, Territory, or District of the United States and a place in any other State, Territory, or District thereof, on any vessel or vehicle of any description operated by a common carrier in the transportation of passengers or articles of commerce by land or water.

SEC. 4. Every package containing explosives or other dangerous articles when presented to a common carrier for shipment shall have plainly marked on the outside thereof the contents thereof, and it shall be unlawful for any person to deliver, for interstate or foreign transportation, to any common carrier engaged in interstate or foreign commerce by land or water, or to cause to be delivered, or to carry, any explosive, or other dangerous article, under any false or deceptive marking, description, invoice, shipping order, or other declaration, or without informing the agent of such carrier of the true character thereof, at or before the time such delivery or carriage is made.

SEC. 5. That every person who knowingly violates, or causes to be violated, any of the foregoing provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished for each offense by a fine not exceeding two thousand dollars, or by imprisonment not exceeding eighteen months, or by both such fine and imprisonment, in the discretion of the court.

SEC. 6. That this Act shall take effect immediately, and all Acts or parts of Acts in conflict therewith are hereby repealed, except section forty-four hundred and twenty-two of the Revised Statutes of the United States, which shall remain in full force and effect.

Approved May 30, 1908.

In accordance with the above statute at a general session of the Interstate Commerce Commission held in Washington, D. C., July 1, 1908, upon notice to the Secretary of War, the Secretary of the Navy, the Secretary of the American Railway Association (representing railroad carriers generally), and to the manufacturers of explosives in so far as they were known to the Commission, the matter was duly considered and a set of regulations was made and prescribed by the Commission and ordered to be formulated and published on July 15, 1908.¹

¹ The regulations have been embraced in a pamphlet of twenty-six pages and may be had upon application to the Secretary of the Commission.

CHAPTER XIII

Tariff Circular No. 15-A

(Contains Revision of and Cancels Tariff Circular 14-A and Special Circulars Nos. 1, 2, 3, 5 and 7, Tariff Department)

Important Changes Have Been Made and Appear Herein

INTERSTATE COMMERCE COMMISSION

REGULATIONS

GOVERNING THE

CONSTRUCTION AND FILING OF FREIGHT TARIFFS AND CLASSIFICATIONS AND PASSENGER FARE SCHEDULES

ADMINISTRATIVE RULINGS AND OPINIONS

REVISED BY ORDER OF COMMISSION
OF FEBRUARY 3, 1908

APPROVED MARCH 9, 1908
EFFECTIVE APRIL 15, 1908

REGULATIONS ISSUED BY THE INTERSTATE COMMERCE COMMISSION GOVERNING THE CONSTRUCTION AND FILING OF FREIGHT TARIFFS AND CLASSIFICATIONS AND PASSENGER FARE SCHEDULES, FOR USE BY COMMON CARRIERS WHOLLY BY RAILROAD OR PARTLY BY RAILROAD AND PARTLY BY WATER, AS DEFINED IN THE ACT TO REGULATE COMMERCE

Revised by order of Commission of February 3, 1908

Approved March 9, 1908

Effective April 15, 1908

Freight Tariffs and Classifications

Tariffs that were lawfully on file with the Commission on May 1, 1907, and that have not since that time been superseded or canceled, will be considered as continued in force, and until they can be properly reissued may be amended without complying with the requirements of these rules as to the number and volume of supplements, and as to showing concurrence forms and numbers. All tariffs issued or reissued later than May 1, 1907, must conform to all of these rules. The Commission may direct the reissue of any tariff at any time. A tariff publication as to which these regulations have not been conformed to is subject to rejection by the Commission when tendered for filing.

The term "joint rate," as used herein, is construed to mean a rate that extends over the lines of two or more carriers and that is made by agreement between such carriers.

"Joint tariffs" are those which contain or are made up from such "joint rates."

Tariffs Must be Printed

1. All tariffs must be printed on hard calendered paper of good quality from type of size not less than 6-point full face. Stereotype, planograph or other printing-press process may be used. Reproductions by hectograph or similar process, typewritten sheets, or proof sheets must not be used for posting or filing.

Form and Size of Tariff

2. All tariffs must be in book, sheet, or pamphlet form, and of size 8 by 11 inches. Loose-leaf plan may be used, so that changes can be made by reprinting and inserting a single leaf.

3. The title-page of every tariff shall show:

(a) Name of issuing carrier, carriers, or agent.

(b) I. C. C. number of tariff in bold type on upper right-hand

corner, and immediately thereunder, in smaller type, the I. C. C. number or numbers of tariffs and supplements canceled thereby. If, however, the number of canceled tariffs is so large as to render it impracticable to thus enter them on title-page, they must be shown on following page; but specific reference to such list must be entered on title-page immediately under the number of the tariff. Serial numbers of carrier may, if desired, be entered below the upper marginal line of title-page. Separate serial I. C. C. numbers will be used for freight and passenger tariffs.

(c) Whether tariff is local, joint, proportional, or a combination of same.

(d) Whether class, commodity, or a combination of both, and the territory or points from and to which the tariff applies, briefly stated.

(e) Reference by name and I. C. C. number to the classification and exception sheets governing the tariff. Following form may be used: "Governed by the ——— classification, I. C. C. No. — and exceptions thereto I. C. C. No. —, and supplements thereto and reissues thereof."

(f) Date of issue and date effective. Any tariff may be changed upon statutory notice of thirty days, or, under special permission from the Commission, upon shorter notice. Therefore, a provision in a tariff that the same, or any part thereof, will expire upon a given date, is not a guaranty that the tariff, or such part of it, will remain effective until that date. The Commission considers such expiration notices undesirable, as many complications have arisen through their being overlooked. Such provision, if used, must be understood to mean that the tariff, or specified part of it, will expire upon the date named unless sooner canceled, changed, or extended in lawful way. On such tariffs the term "Expires ———, unless sooner canceled, changed, or extended," must be used.

(g) Name, title, and address of officer by whom tariff is issued.

(h) On tariffs of more than four pages, on upper left-hand corner the words: "Only two supplements to this tariff may be in force at any time."

(i) On every tariff or supplement that is issued on less than thirty days' notice by permission or order or regulation of the Commission, notation that it is issued under special permission or order of the Interstate Commerce Commission, No. —, of date ———, or by authority of Rule —, Tariff Circular —.

4. Tariffs in book or pamphlet form shall contain in the order named:

(a) Table of contents, full and complete. Except that when tariff contains so small a volume of matter that its title-page or its arrangement plainly discloses its contents, the table of contents may be omitted.

(b) Names of issuing carriers, including those for which joint agent issues under power of attorney, and names of carriers participating under concurrence, both alphabetically arranged. If there be not

more than ten participating carriers their names may be shown on the title-page of the tariff. The form and number of power of attorney or concurrence by which each carrier is made party to the tariff must be shown.

(c) Alphabetically arranged and complete index of all commodities upon which commodity rates are named, preceded by a paragraph, viz.: "Following list enumerates only such articles as are given specific rates; articles not specified will take class rates." All of the items relating to different kinds or species of the same commodity will be grouped together. For example, all items of coal under "Coal," and descriptive word or words following, as "Coal," "Coal—Anthracite," "Coal—Bituminous," etc.

The index to a general commodity tariff shall also include in alphabetical order all articles upon which commodity rates are named in other tariffs applying from any point of origin to any point of destination named in the tariff, and with such entry shall be shown the number or numbers of tariffs in which such rates are found. For example, "Lime, I. C. C. 122," or "Staves, I. C. C. 1042." Carriers' tariff numbers may be also shown.

A commodity item which refers to a list of articles taking one commodity rate need be indexed but once provided reference is given to the item or the I. C. C. number of the issue that contains list of the articles embraced in the term. For example, "Agricultural implements, as described in item — of this tariff," or "as described in Western Classification, I. C. C. No. — ;" or "Packing House Products, as described in ——— Tariff, I. C. C. No. —." When such specific reference to list of articles embraced in the term is given, the several articles so embraced need not be indexed separately.

A tariff on a single commodity, or a few commodities, shall contain all of that carrier's commodity rates on such commodity or commodities applying from any point of origin to any point of destination named in the tariff. If there be not more than ten such commodities, they may be named on the title-page of the tariff.

If all of the commodity rates to each destination in the tariff are arranged alphabetically by commodities, and plain reference thereto is given in table of contents, further or other index of commodities may be omitted from that tariff, provided that, if the issuing carrier, or a participating carrier, has in other tariff or tariffs commodity rates applying from any point of origin to any point of destination named in the tariff, a complete list in alphabetical order by commodities of such other tariffs, together with description of character of traffic, territory or points of origin and of destination, and the I. C. C. numbers of tariffs containing such commodity rates shall be shown in the first part of the tariff and shall be specifically referred to in the table of contents.

Excepting such as appear in a tariff or a supplement to a tariff which does not require an index, a commodity rate that is not included in the index will be treated as not having been published and cannot lawfully be used.

(d) Alphabetically arranged and complete index of stations from

which the tariff applies and alphabetically arranged and complete index of stations to which the tariff applies, together with the name of State in which located. If there be not more than twelve points of origin and twelve points of destination, they may, if practicable, be shown on title-page of tariff.

Geographical description of application of tariff may be used only when the tariff applies to or from all stations in one or more States or Territories or when it applies to all points in a State or Territory except those specified. But such list of exceptions for a State may not include more than 30 points. For example, a tariff may state that it applies from all points in New York, Pennsylvania, and New Jersey, and from all points in Delaware except (here give alphabetical list of excepted points), and from the following points in Ohio (here give alphabetical list of Ohio points).

Traffic territorial or group descriptions may be used to designate points to or from which rates named in the tariff apply, provided a complete list of such points arranged by traffic territories or groups is printed in the tariff or specific reference is given to the I. C. C. number of the issue that contains such list. In this list the stations in each traffic territorial or group description shall be arranged alphabetically, and the name or names of roads upon which stations are located must be shown; or all of the stations in traffic territories or groups named in the tariff may be included in one alphabetical index, provided (1) that points of origin and points of destination are shown separately, alphabetically; (2) that the name or names of roads upon which stations are located and the traffic territorial or group description in which they belong are shown opposite the several stations.

(e) Explanation of reference marks and technical abbreviations used in the tariff.

(f) List of exceptions, if any, to the classification governing the tariff which are not contained in exception sheets referred to on title-page.

(g) Such explanatory statement in clear and explicit terms regarding the rates and rules contained in the tariff as may be necessary to remove all doubt as to their proper application.

(h) Rules and regulations which govern the tariff, the title of each rule or regulation to be shown in bold type. Under this head all of the rules, regulations, or conditions which in any way affect the rates named in the tariff shall be entered, except that a special rule applying to a particular rate shall be shown in connection with and on the same page with such rate.

No rule or regulation shall be included which in any way or in any terms authorizes substituting for any rate named in the tariff a rate found in any other tariff or made up on any combination or plan other than that clearly stated in specific terms in the tariff of which the rule or regulation is a part.

A carrier or an agent may publish, under I. C. C. number, post, and file a tariff publication containing the rules and regulations which are to govern certain rate schedules, and such publication may be made

a part of such rate schedules by the specific reference "Governed by rules and regulations shown in ——— I. C. C. No.—."

A rate schedule may in like manner refer to another schedule for the governing rules and regulations.

A schedule or a publication so referred to must be on file with the Commission and be posted at every place where a schedule that refers to it is posted.

(i) The rates, explicitly stated, together with the names or designation of the places from and to which they apply, all arranged in a simple and systematic manner. Complicated or ambiguous plans or terms must be avoided.

NOTE.—The aim and tendency will at all times be in the direction of uniformity. It is not considered practicable or wise to undertake, at this time, the adoption of a uniform form of stating rates in the several localities where, from peculiarities of conditions and long custom, representatives of carriers and shippers have become well acquainted with certain forms especially adapted to their use and which can easily be made to conform to these general rules. Adoption of a uniform form is a subject of such importance as to warrant the more exhaustive investigation and consideration which is being given to it.

The different routes via which tariff applies may be shown, together with appropriate reference to application of rates. When a tariff specifies routing the rates may not be applied via routes not specified. A tariff may show the routing ordinarily and customarily to be used and may provide that, if from any cause shipments are sent via other junction points but over the lines of carriers parties to the tariff, the rates will apply.

If a tariff contains no routing directions the joint rates shown therein are applicable between the points specified via the lines of any and all carriers that are parties to the tariff; and shipper must not be required to pay higher charges than those stated in the tariff because the carriers have not agreed divisions of the rates via the junction through which the shipment moves. If agent of carrier bills or sends shipment via a route or junction point that is covered by the tariff but via which no division of the rates applies, it is for the carriers to agree between themselves upon the division of the rates, and the intermediate or delivering carriers may demand from the carrier whose agent so missends shipment their full local rates for the services which they perform. (This must not be construed as conflicting with Rule 70.)

Rates on Through Shipment When no Joint Rates Apply

5. The practice on part of carriers of accepting and transporting through shipments, as to which no joint rate applies, upon rates made up by combination of the rates of the several carriers participating in the movement, and of collecting, as delivering carriers, the aggregate charges of the several carriers upon such shipments, and of accounting to such carriers for their several portions of such charges, is practically universal. That custom has the same binding effect

as a joint rate, both as between carriers themselves and as between carriers and shippers. Therefore carriers may apply to through shipment rates to and from stations to and from which there is no applicable published joint rate by using lawfully published bases, locals or proportionals, in connection with other lawfully published tariffs.

Basing or Proportional Tariffs Must be Specific

Tariffs containing basing or proportional rates must specify clearly the extent and manner of their use, and tariffs that are especially intended for use in connection with published basing rates must show the I. C. C. numbers of tariffs in which bases can be found.

May Specify Basing Point or Factors for Combination Rate

A carrier may provide in its tariffs that, in the absence of a specific rate from point of origin to destination of a through shipment, combination rate to or via certain points will be made upon specified basing point or points, or by using certain specified tariffs or rates, and the combination rate so specified will be the lawful rate for that shipment.

Lowest Combination Lawful Rate

If no specific rate from point of origin to destination of a through shipment is provided, and no specific manner of constructing combination rate for it is prescribed, the lowest combination of rates applicable via the route over which the shipment moves is the lawful rate for that shipment.

Combination Rate a Unit as of Date of Original Shipment

Such combination through rate must be treated as a unit from the date of original shipment to the date of its arrival at destination, and the rate applied must be the combination of the rates which exists upon the date of original shipment. All of the conditions, regulations, and privileges obtaining as to any factor in such combination rate for through shipment at the time of original shipment upon such combination through rate must be adhered to and cannot be varied as to that shipment during the period of transportation of such shipment to its final destination. A local or proportional rate "in" cannot be absorbed, diminished, or affected by any "out" rate not in effect at the time when the traffic moved upon such local or proportional rate.

Limiting Use of Terms "Common Points," "Grain Products," etc.

6. The terms "common points," "Southeastern territory," or similar terms shall not be used in any tariff for the purpose of indicating the points from or to which rates named therein apply unless a full list of such points is printed in the tariff or specific reference is given to the I. C. C. number of the issue that contains such list.

The terms "grain products," "forest products," "petroleum and its products," "cotton-seed products," or similar terms must not be used in any tariff for the purpose of indicating the articles to which the rates apply, unless a full list of the articles intended to be included in and covered by such terms is printed in the tariff or specific reference is given to I. C. C. number of issue that contains such list.

Commodity Rates Must be Specific

Commodity rates must be specific and must not be applied to analogous articles.

Commodity Rate the Only Rate That Can Lawfully be Used

7. In every instance where a commodity rate is named in a tariff upon a commodity and between specified points such commodity rate is the lawful rate and the only rate that can be used with relation to that traffic between those points, even though a class rate or some combination may make lower. The naming of a commodity rate on any article or character of traffic takes such article or traffic entirely out of the classification and out of the class rates between the points to which such commodity rate applies.

Rates for Mixed Carloads

Class rates or commodity rates may be made for specified mixed carloads and will be the lawful rates for such mixtures, even though certain parts of the mixtures are covered by class or commodity rates when shipped separately.

Tariff or Supplement to Tariff Shall Specify Cancellations

8. If a tariff or supplement to a tariff is issued which conflicts with a part of another tariff or supplement to a tariff which is in force at the time, and which is not thereby canceled in full, it shall specifically state the portions of such other tariffs which are thereby canceled, and such other tariffs shall at the same time be correspondingly amended in the regular way. It will not be necessary to give on commodity tariff or supplement reference to class-rate tariffs that may be affected, nor to give on class-rate tariffs or supplements reference to commodity tariffs, except as provided in Rule 56.

Cancellation Must be by Authorized Agent or by Carrier That Issued the Tariff Canceled

An agent who acts under power of attorney is fully authorized to act for the carriers that have named him their agent and attorney, and, therefore, it is permissible for him to cancel by his tariffs issues of such principals. A concurrence, however, does not confer authority upon either carrier or agent to cancel tariffs of concurring carrier, and, therefore, tariffs issued under concurrences may not assume to

cancel, or carry notation of cancellation of, tariffs of and issued by concurring carriers. Such cancellations must be made by the carrier that issued the tariff that is to be canceled.

Cancellation Notice Shall Specify Where Rates Will Thereafter be Found

When a commodity rate is canceled the cancellation notice must show where rate will thereafter be found, or what rate will thereafter apply. For example: "Rate in _____ I. C. C. No. _____ will apply," or "Class rates will apply," or "Combination rate will apply," or "No rates in effect."

If a tariff is canceled with the purpose of applying in lieu thereof the rates shown in some other tariff, the cancellation notice shall make specific reference to the I. C. C. number of tariff in which such rates will thereafter be found. Cancellation of a tariff also cancels supplement to such tariff, if any in effect. If a tariff is canceled by the issuance of a similar tariff to take its place, cancellation notice must not be given by supplement, but by notice printed in new tariff, as provided in paragraph (b) of Rule 3.

Amendments and Supplements

9. A change in or addition to a tariff shall be known as an amendment, and, excepting amendments to tariffs of less than five pages, shall be printed in a supplement to the tariff, and shall refer to the page or pages or item or items of the tariff which it amends.

If there are more than ten participating carriers it is not necessary that supplement shall contain reproduction of the list of participating carriers shown in the tariff. Supplement may show that the list of participating carriers is "as shown in the tariff, except" (here show all additions to and eliminations from the original list that are effected by the supplement, or that have been effected by previous supplements, each alphabetically arranged).

No More Than Two Supplements at Any Time

Supplements to a tariff shall be numbered consecutively as supplements to that tariff and not be given separate or new I. C. C. numbers. There shall at no time be more than two supplements in effect to any tariff. Each supplement shall specify the supplement or supplements which it cancels, and shall also show on title-page what supplements are in effect and that such effective supplements contain all changes. For example: "Supplement No. _____ to I. C. C. No. _____." "Cancels Supplements Nos. _____ and _____." "Supplements Nos. _____ and _____ are in effect and contain all changes." The term "cancels conflicting portions" must not be used.

An amended item must always be printed in supplements in its entirety as amended, and the items in each supplement shall be assembled under two general heads:

" Additions, Cancellations and Changes Effected by This Supplement "

(a) Under this head, and under appropriate subheadings if desired, shall be shown all of the additions, cancellations and changes effected by the supplement, each arranged alphabetically by commodities, or principal commodities of group items. If the change is in a class rate or a group rate or rule that applies to a group of points the change may be shown in this part of supplement by stating the name of the affected point together with reference to the item or page number of other part of the supplement where change is shown in the regular order of arrangement of the publication.

" Reissued Items "

(b) Under this head will be assembled in same order reissued items brought forward without change from former supplements.

Show Effective Date of Reissued Items and I. C. C. Reference

A tariff or a supplement which contains reissued items must not bear the notation "effective at once, except as noted" but instead must bear the notation "effective ——— except as noted in individual items." Example: "Issued ———. Effective ———, except as noted in individual items." Reissued items must bear notation "Effective [date upon which item became effective] in I. C. C. No. ———;" or "in Supplement No. ———, to I. C. C. No. ———."

Items reissued from publications that were on file prior to May 1, 1907, may show last date and reference prior to May 1, 1907.

Amount of Matter Supplement May Contain

A tariff of less than 5 pages can have no supplement. Tariffs of 5 to 20 pages, inclusive, may have supplement of 2 pages, exclusive of title-page and index; 21 to 30 pages, inclusive, supplement of 4 pages, exclusive of title-page and index; 31 to 40 pages, inclusive, supplement of 8 pages, exclusive of title-page and index, and 41 pages or over, supplement of twenty-five per cent, exclusive of title-page and index, of the number of pages in tariff, exclusive of indices.

Tariff Must be Reissued

When the effective supplements to a tariff have, in the aggregate, attained the proportions specified, the tariff must be reissued before further amendments may be made.

If a tariff provides that it shall be reissued periodically at specified times, not more than six months apart, and such provision is strictly observed, the supplement to such tariff may contain all amendments made thereto between such specified dates for reissue.

Index to Supplement

A supplement of four pages or over will also contain an index of

its contents similar to the index to the tariff to which it is a supplement.

Supplements to Tariffs That are Filed and Not Yet Effective

If a tariff is filed on statutory notice which cancels another tariff which is in effect, and after such filing and prior to the effective date of such cancellation a supplement to the tariff so canceled is lawfully issued, that supplement can not continue in effect for the thirty days required by law because the cancellation of the tariff also cancels supplements to it. In such a case if the supplement contains any change that is not already included in the tariff that is to become effective it must be issued as a supplement both to the tariff then in effect and to the tariff that is on file and that effects such cancellation, and must be given both I. C. C. numbers. In other words, the supplement must supplement each of the tariffs, and copies must be filed accordingly.

No such supplement to a tariff that is on file and not yet effective may contain any changes not lawfully made by supplement to the tariff which is canceled by the tariff that is on file and is so supplemented; and no other supplement to a tariff that is on file and not yet effective may be made without special permission.

Withdrawal and Adoption of Tariffs When One Carrier is Absorbed by Another Carrier

In case of change of ownership or control of a carrier the carrier whose line is absorbed, taken over, or purchased by another carrier shall unite with that other carrier in common supplements to the tariffs on file with the Commission, on the one hand withdrawing and on the other hand accepting and establishing such tariffs and all effective supplements thereto. Such common supplements shall be executed jointly by the traffic officers of both the old and the new carriers, shall be numbered consecutively as supplements to the tariffs (whether of five pages or less) to which they are directed, and may be made effective on five days' notice to the public and the Commission by noting thereon reference to this rule. Amendments to such tariffs must thereafter be filed in consecutively numbered supplements thereto until the tariffs are reissued. New tariffs reissuing or superseding these shall be numbered in the I. C. C. series of the new carrier.

Tariffs Showing Terminal Charges, Diversion, Reconsignment, Transit Privileges

10. Each carrier shall publish, with proper I. C. C. numbers, post, and file separate tariffs which shall contain in clear, plain, and specific form and terms all the terminal charges and all allowances, such as arbitraries, switching, icing, storage, elevation, diversion, reconsignment, transit privileges, and car service, together with all other privileges, charges, and rules which in any way in-

crease or decrease the amount to be paid on any shipment as stated in the tariff which contains the rate applicable to such shipment, or which increase or decrease the value of the service to the shipper. Such tariffs must stipulate clearly the extent of such privileges and the charges connected therewith, and shall also state whether or not the rate published by the initial carrier from the point of origin to ultimate destination will apply. If the through rate does apply it must be as of the date of shipment from point of origin.

If such privilege is granted or charge is made in connection with the rate under which the shipment moves from point of origin, the initial carrier's tariff which contains such rate must also show the privilege or the charge or must state that shipments thereunder are entitled to such privileges and subject to such charges according to the tariffs of the carriers granting the privileges or performing the services.

Distance Tariff May be Used When no Other Rates Provided

It is permissible for a carrier, or for two or more carriers that are operated under one general traffic official, to issue a distance tariff for use in determining rates on its, or their, own lines, but only in cases where no other rates are provided. Such tariff must bear on its title-page the following notation:

Notation on Distance Tariff

"Rates shown herein may be used only when no other rates apply. When governed by classification which also contains distance rates they will take precedence over the distance rates in such classification. They may not be used either by themselves or in combination in preference to any specific tariff rate."

A distance tariff may be included in a tariff of specific rates, together with the following rule: "If the use of the distance tariff on page — of this tariff makes a lower charge on any shipment than the specific rate shown in this tariff such lower charge will apply."

Official List of Stations and Distances

Every carrier that uses a distance tariff, which is or may be used in connection with rates on interstate shipments, must incorporate therein an official list of all the stations, in connection with which the tariff may apply, showing in proper arrangement the distances between them; or must give therein reference by I. C. C. number to the issue that contains such list.

A carrier may show in a tariff publication under I. C. C. number an official list of its stations and may show therein distances, prepaid stations, billing instructions to points not on line of road, etc. If such publication contains no rates and no rules or regulations that affect the charges on any shipment, supplements to it may be issued

on one day's notice to the public and to the Commission. Such supplement so issued must bear on title-page notation "Issued under authority of Rule 10, Tariff Circular 15-A." If, however, such publication contains any rate or any rule or regulation that can affect a charge upon any shipment, no change in the publication may be made except on statutory notice or on special permission for shorter time. No supplement to such publication, whether issued under authority of this rule or on statutory notice or under special permission, may contain notice of any change effective prior to the effective date of the supplement.

Rates to or from new stations on old lines of road may not be established, nor rates to or from old stations be withdrawn, except upon statutory notice or under special permission.

Index of Tariffs

11. Each carrier shall publish under proper I. C. C. number, post, and file a complete index of tariffs which are in effect and to which it is a party either as an initial or a delivering carrier. Such index shall be prepared in sections as follows and shall show: (a) I. C. C. numbers; (b) carrier's own number; (c) index number; (d) initials of issuing road or agent; (e) issuing road or agent's number; (f) character of tariff or description of the articles upon which it applies; (g) where tariff applies from; (h) where tariff applies to.

NOTE.—Items (b), (c), and (e) may be omitted. Items (f), (g), and (h) will be stated in concise general terms.

First section: A list of all the tariffs as to which the carrier is an initial carrier. Commodity tariffs to be entered alphabetically under names of commodities or principal commodities. Tariffs applying to different groups of the same commodity must be grouped together; e. g., "Lumber—hardwood;" "Lumber—yellow pine," etc.

Following the specific commodity tariffs will be entered the general commodity tariffs, the class and commodity tariffs, and the class tariffs. Under each of these heads the application of the tariffs will be described by alphabetical arrangement of the points or territory from or to which they apply, in either the "From" or "To" column.

Under the head of "Miscellaneous schedules" will follow list of schedules such as billing books, classifications, exception sheets, switching tariffs, terminal charges, etc., each entered in alphabetical order.

Second section: List of all tariffs under which the carrier is a delivering carrier, arranged by commodities and classes as prescribed in the first section.

Third section: A complete list of the numbers of tariffs of its own I. C. C. series arranged in numerical order.

If carrier so desires, lists of its division sheets, official circulars, etc., may appear in this publication. Supplements need not be included in indices.

Revision and Supplements

If any changes are made, this index shall be corrected to date and be reissued each month, or supplement may be issued each month showing all changes and also what tariff, if any, shown in index is canceled or superseded by one shown in supplement and index be reissued every six months. If supplements are used they must be constructed in accord with specifications as to construction of index, and each supplement must cancel preceding supplement and bring forward all corrections.

NOTE.—This rule is also in rules governing passenger tariffs. One index containing both freight and passenger tariffs will be deemed sufficient, but if both are included in one index four copies must be sent to the Commission.

Suspension and Restoration of Rail-and-water Rates

12. Tariffs containing rail-and-water rates or all-water rates applicable via routes upon which it is necessary to close navigation during a portion of the year, may provide for suspension and restoration of the rail-and-water rates and the all-water rates named therein under the following regulations:

(a) The following notation shall appear on the title page of the tariff:

“The rates named herein for rail-and-water and all-water transportation are subject to suspension at the close of navigation and restoration on the opening of navigation of (here insert the name of the water carrier or carriers specified in the tariff) on notice as provided on page * * * of this tariff.”

(b) In the rules governing the tariff shall appear the following:

“In anticipation of opening of navigation of (here insert name of water carrier or carriers named in the tariff) restoration of the rail-and-water and all-water rates contained in this tariff and in effective supplements thereto which were in force on the date the rates were last suspended or which have subsequently been made effective, will be announced by supplement to this tariff which will be filed with the Interstate Commerce Commission, be posted at stations from which the rates apply, and become effective not less than three days thereafter.”

NOTE.—This effective date shall not be such as to allow more than thirty days at point of transshipment for reforwarding by the water carrier.

“The rates in this tariff and in supplements thereto for rail-and-water and all-water transportation are effective only during the season of navigation of (here insert the name of water carrier or carriers named in the tariff) until (here insert date upon which freight can be forwarded from point of shipment and with reasonable certainty reach the point of transshipment prior to the last sailing of water carrier). From that date and until announcement by supplement to this tariff of the date which wholly suspends rates for the season, shipments will be accepted under this tariff only

subject to the provision that in the event of such shipments being in excess of the available vessel capacity at time of arrival at port of transshipment or of arrival too late for forwarding by vessel, the same will be forwarded via all-rail route and be subject to the tariff rates via such all-rail route in effect on the date of shipment from the point of origin; shipping receipts, bills of lading and waybills must bear notation to this effect. The supplement announcing the close of navigation and the suspension of rail-and-water and all-water rates named in this tariff and in its effective supplements will be filed with the Interstate Commerce Commission and will be posted at stations from which the rates apply not less than three days in advance of the date upon which the rates will be suspended from points of original shipment."

(c) Supplements issued under this rule announcing suspension and restoration of rail-and-water and water rates in tariffs must not contain anything except such suspension or restoration notice and such supplements will not be counted against the number of supplements that is permitted as to such tariff under Rule 9.

(d) Rail-and-water and all-water rates suspended under this rule may be reissued or amended during such period of suspension upon statutory notice the same as though the rates were in effect and active use, but the restoration of the rates by supplement notice will not advance the effective date of any supplement to the tariff which has not on the date of restoration become effective. Supplements made effective prior to the date of restoration will be made effective on a given date, "Subject, however, to restoration of the tariff rates at a subsequent date."

(e) Where the tariff suspended or restored under this rule applies to joint transportation by rail and river, or canal, or inland lakes other than the Great Lakes, such tariffs may be suspended or restored on a like notice of one day instead of three days.

(f) Rail-and-water tariffs now under suspension and that have not expired by their terms or been canceled may be brought within this rule by the issuance of supplements which add to the tariff the provisions of paragraphs (a) and (b) of this rule. Such supplement may be issued under paragraph (c) of this rule, and, until April 15, 1908, may be issued on one day's notice to the public and to the Commission, giving reference to this rule.

Statutory notice of suspension, withdrawal, or restoration of rates or regulations must be given as to all tariffs that are not brought within the provisions of this rule.

The provisions of Rule 10 will also apply to carriers in rail and water lines and to tariffs applying on such lines, and in addition thereto, if storage or transit privilege is given at port of transshipment on the Great Lakes in connection with a joint rail-and-water rate upon which shipment moves from point of origin, the initial carrier's tariff which contains such rate must also contain the privilege or the charge, or give specific reference by I. C. C. number to the tariff of the carrier that grants the privilege or performs the service which contains such regulations and charges connected therewith.

Filing of Tariffs—Concurrence

13. Tariffs, classifications, and exception sheets and supplements thereto shall be filed with the Commission by proper officer of the carrier or by an agent designated to perform that duty, and concurrence of every carrier participating therein must be on file with the Commission or accompany the tariff or supplement. If a carrier authorizes an agent to file its tariffs or classifications and exception sheets and supplements thereto, or certain of them, official notice of such authorization and of acceptance of responsibility by the carrier for his acts, in form as hereinafter specified, must be filed with the Commission.

Authority to Agent May be Revoked or Transferred

Such notice may be revoked by a carrier upon thirty days' official notice to the Commission, or at any time be transferred to another agent by filing with the Commission notice of such transfer, accompanied by full-form authorization for the newly named agent.

Authorizations for Agent and Concurrences in his Tariffs Must be on File

If two or more carriers appoint the same person as agent for the filing of tariffs or classifications and supplements thereto, each of them will be required to file with the Commission power of attorney in form prescribed appointing him their agent; and the concurrence of every other carrier participating in any tariff or classification or supplement thereto which is filed by him must be on file with the Commission or accompany the tariff.

Use of Consolidated Concurrences

When consolidated form of concurrence FX6, FX7, or FX8 has been used and additions are to be made to the list of roads for which such agent acts under powers of attorney the necessity for a new set of consolidated concurrences presents itself. Trouble and inconvenience can be avoided by the issuance of powers of attorney authorizing such agent to receive concurrences provided in Rules 23, 24, and 25, and the securing of new concurrences will be comparatively simple.

Such joint agent duly authorized to act for several carriers must file joint tariffs or classifications or exception sheets under I. C. C. serial numbers of his own.

Tariffs issued by a carrier under its I. C. C. numbers may include, under proper concurrences, shown therein, rates via, and to and from points on, other carriers' lines and concurring carriers may use such tariffs for posting at their stations. Such tariff must be filed by the issuing carrier and such filing will constitute filing for all lawfully concurring carriers.

The agent or the carrier that issues a joint tariff publication shall at once send copies thereof to each and every carrier that is named as party thereto.

A carrier that grants authority to an agent or to another carrier to publish and file certain of its rates must not in its own publications publish rates that duplicate or conflict with those which are published by such authorized agent or other carrier.

If an agent publishes class rates and does not also publish commodity rates, such agent's class tariff must carry notation that the commodity rates of the carriers parties to the tariff are to be found in their individual issues, and that where so found they take precedence over class rates.

If an agent publishes a part but not all of the commodity rates of the carriers for which he acts, all of his tariffs containing commodity rates must bear notation that commodity rates not shown therein are to be found in the carriers' individual issues, and where so found they take precedence over class rates.

All State or Other Rates Used for Interstate Shipments Must be Posted and Filed

Rates for through shipments are often made by adding together two or more rates. All State or other rates used in combination for interstate shipments must be posted at stations and filed with the Commission, and can only be changed as to such traffic in accordance with the terms of the Act. The Commission believes it proper that all local tariffs be given I. C. C. numbers and be posted and filed with the Commission in manner prescribed in the Act.

Statutory Notice or Authority for Shorter Notice Must be Shown

14. The act requires that all changes in rates, or in rules that affect rates, shall be filed with the Commission at least thirty days before the date upon which they are to become effective. Manifestly it is impossible for the Commission to check the items in tariffs to determine whether or not the statutory notice has been given. The title-page of every tariff must show full thirty days' notice, or must bear a plain notation of the number and date of the permission, or the rule, or the decision of the Commission under which it is effective on less than statutory notice.

The law affirmatively imposes upon each carrier the duty of filing with the Commission all of its tariffs and amendments thereto, as prescribed in the law or in any rule relative thereto which may be announced by the Commission, under penalty for failure so to do, or for using any rate which is not contained in its lawfully published and filed tariffs. The Commission will give such consistent assistance as it can in this respect, but the fact that receipt of a tariff, or supplement to a tariff, is acknowledged by the Commission, or the fact that a tariff, or supplement to a tariff, is in the files of the Commission will not serve or operate to excuse the carrier from responsibility or liability for any violation of the law, or of any ruling lawfully made thereunder, which may have occurred in connection with the construction or filing of such tariff or supplement.

Thirty Days' Notice Required for Every Publication Filed—Tariffs Must be Delivered to Commission, Free From All Charges or Claims for Postage, the Full Time Required by Law

Thirty days' notice to the public and to the Commission is required as to every publication which it is necessary for a carrier to file with the Commission, regardless of what changes may or may not be effected thereby. No tariff or supplement will be accepted for filing unless it is delivered to the Commission, free from all charges or claims for postage, the full thirty days required by law before the date upon which such tariff or supplement is stated to be effective. No consideration will be given to or for the time during which a tariff or supplement may be held by the Post-Office Department because of insufficient postage. A tariff or a supplement that is received by the Commission too late to give the Commission the full thirty days' notice required by law will be returned to sender, and correction of the neglect or omission cannot be made which takes into account any time elapsing between the date upon which such tariff or supplement was received and the date of attempted correction. In other words, when a tariff or a supplement is issued and as to which the Commission is not given the statutory notice it is as if it had not been issued, and full statutory notice must be given of any reissue thereof. No consideration will be given to telegraphic notices in computing the thirty days' notice required. For tariffs and supplements issued on short notice under special permission of the Commission full thirty days' notice is not required, but literal compliance with the requirements for notice named in any permission granted by the Commission will be exacted and in accord with the policy and practice above outlined.

Rejected Schedules

When a schedule is rejected by the Commission as unlawful, the records so show and, therefore, such schedule should not thereafter be referred to as canceled, amended, or otherwise except to note on publication that is issued in lieu of such rejected schedule "In lieu of _____ rejected by Commission;" nor should the number which it bears be again used.

Rates prescribed by the Commission in its decisions and orders after hearings upon formal complaints shall, in every instance, be promulgated by the carriers against which such orders are entered in duly published, filed and posted tariffs, or supplements to tariffs.

Permission for Less Than Statutory Time and Notation on Tariff

Unless otherwise specified in the order in the case, such tariff or supplement may be made effective upon five days' notice to the Commission and to the public, and if made effective on less than statutory notice, either under this rule or under special authority granted in the order in the case, shall bear on its title page notation "In compliance with order of Interstate Commerce Commission in case No. ____."

Circulars Announcing Compliance with Orders of Court

Circulars announcing or explaining the attitude and course of carriers under injunction of a court, relating to tariff rates or regulations, must not be issued as supplements to tariffs nor given I. C. C. numbers unless they are issued on statutory notice or under special permission from the Commission for shorter time. The Commission will, however, be pleased to have copies of such circulars and the information therein contained.

Numerical Order of I. C. C. Numbers of Tariffs, or Explanation of Missing Numbers, Required

Each carrier files tariffs under I. C. C. numbers, which are presumed to be used consecutively. Occasionally a tariff or supplement is received which does not bear I. C. C. number next in numerical order to that borne by the last one filed. This is sometimes occasioned by the missing number having been assigned to a tariff that is in course of preparation. Request is made that in so far as is possible carriers will file tariffs and supplements in consecutive numerical order of I. C. C. numbers. If from any cause this is not done in any instance, the tariff or supplement that is filed with an I. C. C. number that is not consecutive with the last number filed must be accompanied by a memorandum explaining as to the missing number or numbers.

Two Copies of Tariffs Must be Filed

On and after April 1, 1907, common carriers and agents are directed, in filing schedules in compliance with the statute, to transmit two (2) copies of each tariff, supplement, classification, or other schedule of rates or regulations, for the use of the Commission, both copies to be included in one package and under one letter of transmittal.

Address Tariffs to Auditor

Tariffs sent for filing must be addressed "Auditor Interstate Commerce Commission, Washington, D. C."

Issuance of Fast Freight Line Billing Books

15. Fast freight line billing or instruction books which are, by reference, made part of carrier's tariffs, are in effect tariffs. The following method of publication and filing of such books and of concurring therein may be followed:

The interested carriers may arrange for a carrier of their number to execute power of attorney Form FX1, appointing an agent with authority to issue the billing or instruction book in the name, place, and stead of the carrier giving the power of attorney. The publication must show on its title page that it is issued by the person designated in the capacity of agent for the carrier that gives him power of attorney.

It will be sufficient for each of the other initial carriers that uses the billing or instruction book in connection with its tariffs to give concurrence in that book, running to the carrier that issues the book, on Form FX2 or FX5; and for all carriers that participate in the publication as intermediate or terminal carriers to each give general concurrence FX3 or FX4 in the tariffs issued by the carrier granting power of attorney, or its agent.

Concurrences Form FX3 will, without modification, include the billing or instruction books issued by a carrier to which such concurrence has been given, or by its agent under power of attorney, but if such publication names or affects rates *from* the stations on line of concurring carrier concurrence FX2, FX4, or FX5 must be used.

Issuance of Classification by Joint Agent

16. A carrier may grant to a joint agent authority to publish and file for it classification and supplements thereto and exceptions to the classification; or, such exceptions may be published by the carrier in its own issues, either as parts of individual tariffs or in a publication that is given an I. C. C. number, that is filed and posted as required, and that is devoted to such exceptions. Such exceptions and changes therein may be made only on statutory notice or under special permission for shorter time.

In so far as is reasonably practicable exceptions should be included in the tariff which they affect.

I. C. C. Numbers of Classification

A joint agent to whom carriers have extended authority under power of attorney to publish and file classification and supplements thereto must issue them under his own I. C. C. numbers, must show in the classification a list of the carriers for which he acts under power of attorney, giving as to each the FX1 number of such authority, and must file the classification and supplements thereto on behalf of all of the carriers that have so authorized him to act for them; and such carriers will not file the classification or supplements thereto for themselves. The provisions of the law as to statutory notice must be observed in the issuance of supplements or reissue of the classification.

If a carrier fails to authorize an agent to file the classification for it and undertakes to file it for itself, it is bound by the terms of the law as to notice of change and date of filing, both as to the classification and each supplement thereto.

In showing the list of participating carriers in supplement the rule prescribed in Rule 9 will be followed.

Power of Attorney

In giving power of attorney for this purpose the form shown in Rule 18 may be modified by striking out from line 5 the word "tariffs," and, if desired from line 6 the words "and exception sheets."

Concurrence

If a carrier has given another carrier concurrence FX4, under which it concurs in classification which that other carrier or its agent may make and file, the carrier to which that concurrence is given may exercise the authority by its lawfully appointed agent, and the carrier which gave the authority be shown in the publication as participant under the form and number of its concurrence.

Joint Tariffs Issued by Joint Agents

17. It will be permissible for an agent and attorney for certain lines to join with another agent and attorney for lines in another territory in the issuance of tariffs, naming joint through rates from points in one territory to points in the other, or "between" points in the territories represented by such agents. In doing this each of such agents acts for the lines that have given him power of attorney FX1 and for the lines that have given proper concurrences to the carriers that have given him such power of attorney; and for such lines only.

I. C. C. Numbers and Filing

Such publication will bear I. C. C. numbers, under the serial of each of the agents, and each of the agents will file the publication and each and every supplement thereto for and on behalf of the roads for which he is attorney and agent and those that are participants under concurrences to the roads for which he is agent and attorney, just as if it were his individual publication on behalf of those carriers alone. Each of such agents will be held to strict conformity to the law and the tariff regulations regarding the construction of the tariff and notices of changes therein, and in filing the tariff and each and every supplement thereto.

Under this arrangement each agent acts only for the carriers that he has due authority to act for. The principals of each are bound by the acts of their attorney and agent, and as each will file the tariff under his own I. C. C. number and for the roads which he lawfully represents the cross exchange of concurrences between all of the different roads represented on the one hand by one agent and on the other hand by the other agent will not be necessary as to that tariff.

Lists of Participating Carriers

Such publication will show lists of participating carriers in the following manner: First, a list of the carriers from which one of the agents has power of attorney FX1, showing as to each the FX1 number of such authority. Second, a list of the carriers that participate under concurrences to the lines for which that agent is agent and attorney, showing the form and number of each concurrence. Third, a list of the carriers for which the other agent is agent and

attorney, with the FX1 number of his authority as to each. Fourth, a list of the carriers that participate under concurrences to the lines for which that agent is agent and attorney, showing the form and number of each concurrence.

Each of these four subdivisions of the participating carriers will be indicated by plain headlines, as, for instance, "Lines for which Mr. ——— is agent and attorney," "Participating lines under concurrences to carriers for which Mr. ——— is agent and attorney," and like notices for the other agent's lists of principals and concurring lines.

In order to avoid confusion and complications under this plan it is essential that the agents adopting it shall perfect their understandings and that there shall be no omission or neglect on part of either about filing under lawful notice any tariff so issued or any supplement thereto.

Form of Appointment of Agent

18. The following form, on paper 8 by 10½ inches in size, will be used in giving authority to an agent to file for the carrier giving the authority tariffs and supplements thereto. Such authority must not be given to an association or bureau, and it may not contain authority to delegate to another power thereby conferred.

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of carrier in full.]

(Date) ———, ———.

Form FX1—No. —.

Know all men by these presents:

That the [name of carrier] has made, constituted, and appointed, and by these presents does make, constitute, and appoint [name of person appointed] its true and lawful attorney and agent for the said company and in its name, place, and stead to file tariffs, classifications, and exception sheets and supplements thereto, as required of common carriers by the Act to regulate commerce and by regulations established by the Interstate Commerce Commission thereunder for the period of time the traffic and the territory now herein named:

And the said [name of carrier] does hereby give and grant unto its said attorney and agent full power and authority to do and perform all and every act and thing above specified as fully to all intents and purposes as if the same were done and performed by the said company, hereby ratifying and confirming all that its said

agent and attorney may lawfully do by virtue hereof, and assuming full responsibility for the acts and neglects of its said attorney and agent hereunder.

In witness whereof the said company has caused these presents to be signed in its name by its _____ president and to be duly attested under its corporate seal by its secretary, at _____, in the State of _____, on this _____ day of _____, in the year of our Lord nineteen hundred and _____.

THE [name of carrier],
By _____,
Its _____ President.

Attest:

_____,
Secretary.
[CORPORATE SEAL.]

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the agent to whom power of attorney is given. Separate authorizations will be given for freight and passenger tariffs.

For concurrence in tariffs issued and filed by another carrier or its agent forms prescribed in Rules 19 to 25, inclusive, will be used. Concurrences must be given to carriers named therein and authority so granted to a carrier may be by it delegated to its lawfully appointed agent.

All concurrences must be on paper 8 by 10½ inches in size.

Separate concurrences will be given for freight and passenger tariffs.

NOTE.—Experience has demonstrated that it is simpler and better to use concurrence than power of attorney in giving authority to a carrier to publish and file another carrier's rates. Provision for giving power of attorney to another carrier has, therefore, been eliminated except for the purpose of granting authority to give concurrences as provided in Rule 26.

This does not invalidate or change the terms or effect of any power of attorney now on file.

Form of Concurrence

19. The following form will be used in giving concurrence in a tariff that is issued and filed by another carrier or its agent and to which the carrier giving concurrence is a party. If given to continue until revoked, it will serve as continuing concurrence in the tariff described in the concurrence and all supplements to and reissues thereof. If provision for concurrence to continue until revoked is stricken out, a new concurrence will be required with each supplement or reissue.

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of carrier in full.]

GENERAL FREIGHT DEPARTMENT,

(Date) ——— ———.

Form FX2—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of the rate schedule described below, together with supplements thereto and reissues thereof which the named issuing carrier or its agent may make and file, and hereby makes itself a party thereto and bound thereby, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

Title and number: [Here give exact description of title of schedule, including number and name of series.]

Date of issue: ——— ———.

Date effective: ——— ———.

Issued by { [Official.]
 { [Company.]

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

This form will be filed with the Commission by the carrier or agent who files the tariff and will accompany the tariff.

Form of Concurrence

20. Concurrence may be given by any carrier to embrace all tariffs issued by another carrier or its agent in which the concurring carrier is shown as a participating intermediate or delivering line, after the following form:

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of carrier in full.]

GENERAL FREIGHT DEPARTMENT,

(Date) ——— ———.

Form FX3—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any freight-rate schedule or supplement thereto which the [name of carrier] or its agent may make and file, in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such

schedule contains rates applying via its line and to, but not from, points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

[Name of carrier.]
By [Name of officer.]
[Title of officer.]

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the carrier to which concurrence is given. This form must not be qualified in any way except to show what agents have been given power of attorney and to provide that tariffs shall not be issued under the concurrence covering traffic provided for in tariffs issued by such agents.

Form of Concurrence

21. Concurrence may be given by a carrier in tariffs issued by another carrier or its agent applying rates to or from its stations or via its lines, on certain described traffic or between certain described points or territories, after the following form, modified as may be necessary to confer exactly the authority intended to be granted. For granting authority to publish and file rates to and from and via its lines, and not otherwise qualified, carrier will use concurrence form FX5 or FX7, as per Rules 22 and 24:

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of carrier in full.]

GENERAL FREIGHT DEPARTMENT,
(Date) ——— ———.

Form FX4—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any freight-rate schedule or supplement thereto which the [name of carrier] or its agent may make and file and in which this company is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying upon ———; or between ——— and ———; or from ——— to ———; or via ———; until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

[Name of carrier.]
By [Name of Officer.]
[Title of officer.]

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the carrier to which concurrence is given.

Form of Concurrence

22. Concurrence may be given by a carrier in tariffs issued by another carrier or its agent applying rates *to and from* its stations and via its lines and after the following form:

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of carrier in full.]

GENERAL FREIGHT DEPARTMENT,
(Date) ———, ———.

Form FX5—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any freight-rate schedule or supplement thereto which the [name of carrier] or its agent may make and file, and in which this company is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying to and from stations on its lines, and via its lines, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

[Name of carrier.]
By [Name of officer.]
[Title of officer.]

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the carrier to which concurrence is given. This form must not be qualified in any way, unless to show what agents have been given powers of attorney and to provide that tariffs shall not be issued under the concurrence covering traffic provided for in tariffs issued by such agents.

Form of Concurrence

23. If two or more carriers appoint the same person as agent for the publication and filing of tariffs and supplements thereto under powers of attorney form FX1, concurrence in tariffs issued by him under such authority may be in the following form:

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of carrier in full.]

GENERAL FREIGHT DEPARTMENT,

(Date) ———, ———.

Form FX6—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any freight-rate schedule or supplement thereto which the [here give list of all roads for which the agent has power of attorney], or either or any of them, may make and file through their agent and attorney [name of agent], and in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying via its line, and to but not from points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given, or of its agent and attorney herein named.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

Filing

Carrier issuing this form will file the original with the Commission and will furnish duplicate to each of the carriers named in the concurrence, or, if each of those carriers has given said agent power of attorney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicates to each and every carrier represented by him.

Form of Concurrence

24. If two or more carriers appoint the same person as agent for the publication and filing of tariffs and supplements thereto under powers of attorney form FX1, concurrence in tariffs issued by him under such authority may be in the following form:

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of carrier in full.]

GENERAL FREIGHT DEPARTMENT,

(Date) ———, ———.

Form FX7—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any freight-rate schedule or

supplement thereto which the [here give list of all roads for which the agent has powers of attorney], or either or any of them may make and file through their agent and attorney [name of agent], and in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying via its line, and to and from points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given, or of its agent and attorney herein named.

[Name of carrier.]
By [Name of officer.]
[Title of officer.]

Filing

Carrier issuing this form will file the original with the Commission and will furnish duplicate to each of the carriers named in the concurrence, or, if each of those carriers has given said agent power of attorney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicates to each and every carrier represented by him.

Form of Concurrence

25. If two or more carriers appoint the same person as agent for the publication and filing of tariffs and supplements thereto under powers of attorney form FX1, concurrence in tariffs issued by him under such authority applying to or from certain points or territory may be issued in the following form, modified as may be necessary to confer exactly the authority intended to be granted.

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of carrier in full.]

GENERAL FREIGHT DEPARTMENT,

(Date) ———, ———.

Form FX8—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any freight-rate schedule or supplement thereto which the [here give list of all roads for which the agent has powers of attorney], or either or any of them, may make and file through their agent and attorney [name of agent], and in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying upon ———; or between ——— and ———; or from ——— to ———; or from ——— to points on or reached via its line; or from points on or via its line to ——— until this authority is revoked by formal and official notice of revocation placed

in the hands of the Interstate Commerce Commission and of the carriers to which this concurrence is given, or of their agent and attorney herein named.

[Name of carrier.]
By [Name of officer.]
[Title of officer.]

Carrier issuing this form will file the original with the Commission and will furnish duplicate to each of the carriers named in the concurrence, or, if each of those carriers has given said agent power of attorney to receive for its concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicate to each and every carrier represented by him.

NOTE.—Concurrence, form FX2, applies to individual publication named therein. Concurrence, form FX3 or FX6, confers authority to publish and file rates to, but not from, stations on line of concurring carrier, and via its lines. Concurrence, form FX5 or FX7, confers authority to publish and file rates to and from stations on line of concurring carrier, and via its lines. Forms FX3, FX5, FX6, and FX7 are not to be modified except as specified in the rules. The use of these several forms as provided will, therefore, show by the form number just what authority has been given, except when form FX4 or FX8 is used, these forms being provided for instances which the other forms do not exactly fit. The Commission does not require the substitution of concurrence form FX5 for form FX4, now on file, which covers only the authority provided for in the new form FX5, but will welcome such substitution. For all new concurrences forms will be used as specified in the several rules, and FX4 or FX8 only when neither of the other forms provides for the authority it is desired to confer.

Numbers of Concurrences and Authorizations

26. Each carrier will give authorizations and concurrences serial numbers, beginning with No. 1 in each series, as indicated by forms, and continuing in consecutive numbers as to each series, and keeping these numbers separate and apart from the I. C. C. numbers of tariffs.

Printing and Use of Authorizations and Concurrences

It is suggested that for convenience in reference and filing, the powers of attorney and concurrences be printed in triplicate, consisting of a "stub," to be retained by issuing carrier, an "original," to be filed with the Commission, and a "duplicate," to be furnished to the agent to whom power of attorney is given, or the carrier to which concurrence is given.

Revocation Effective

Notice of revocation of a concurrence will become effective forty days from the date upon which such notice is filed with the Commission and served upon the carrier to which such concurrence was given.

Subsidiary or Small-line Tariffs

Subsidiary or small lines which do not wish to issue concurrences or tariffs may give to the parent or other line power of attorney to concur in tariffs, and also general concurrence FX4 or FX5, to file tariffs, and the carrier holding such authority and concurrence may give, and also receive, concurrences for itself and the lines for which it acts in one instrument. Such subsidiary or small lines must, however, be named in concurrences so given.

Conflicting Authority to be Avoided

In giving concurrences care must be taken to avoid probability of two or more agents or carriers naming conflicting rates or rules.

The granting of authority to issue tariffs under power of attorney, or concurrence, does not relieve the carrier conferring the authority from the necessity of complying with the law with regard to posting tariffs. It may use tariffs issued under its authority for that purpose.

Letter of Transmittal

27. All tariffs that are filed with the Commission will be accompanied by a letter of transmittal, on paper 8 by 10½ inches in size, and to the following effect:

[Name of carrier in full.]

GENERAL FREIGHT DEPARTMENT,
(Date) ———, ———.

Advice No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

Accompanying schedule is sent you for filing, in compliance with the requirements of the act to regulate commerce, issued by ———, and bearing

I. C. C. No. —.

Supp. No. —, to I. C. C. No. —.

Effective ———, 190—;

and is concurred in by all carriers named therein as participants, under continuing concurrences or authorizations now on file with the Interstate Commerce Commission, except the following-named carriers, whose concurrences are attached hereto:

(Signature of filing agent.)

A separate letter may accompany each schedule, or the form may be modified to provide for filing under one letter as many schedules as can conveniently be entered.

NOTE.—If receipt for accompanying schedule is desired the letter of transmittal must be sent in duplicate, and one copy will be stamped and returned as receipt.

PASSENGER FARE SCHEDULES

Tariffs that were lawfully on file with the Commission on June 1, 1907, and that have not since that time been superseded or canceled, will be considered as continued in force and until they can be properly reissued may be amended without complying with the requirements of these rules as to the number and volume of supplements, and as to showing concurrence forms and numbers. All tariffs issued or reissued later than June 1, 1907, must conform to all of these rules. The Commission may direct the reissue of any tariff at any time. A tariff publication as to which these regulations have not been conformed to is subject to rejection by the Commission when tendered for filing.

The term "joint fare," as used herein, is construed to mean a fare that extends over the lines of two or more carriers and that is made by joint arrangement or agreement between such carriers.

"Joint tariffs" are those which contain or are made up from such "joint fares."

Tariffs Must be Printed

28. All tariffs must be printed on hard calendered paper of good quality from type of size not less than 6-point full face. Stereotype, planograph, or other printing-press process may be used. Reproductions by hectograph or similar process, typewritten sheets, or proof sheets must not be used for posting or filing, except in preparation of tariffs covering excursion fares that are effective for not exceeding ten consecutive selling dates or for excursions limited to thirty days or less.

29. Passenger tariffs will be of three classes:

(a) Joint tariffs, applying to traffic between points on the lines of two or more carriers.

(b) Local tariffs, applying only to traffic between points on the lines of the issuing carrier.

(c) Interdivision tariffs, applying only to traffic between points on different divisions of the lines of the issuing carrier, except that, under proper concurrences, shown in the tariff, interdivision fares may be included to and from points on directly connecting subsidiary lines. When this is done the title of tariff must be "Interdivision tariff of ——— Ry, and its subsidiary lines," and each such subsidiary line must be shown in list of participating carriers, together with the form and number of its concurrence. The use of interdivision tariffs will be optional with carriers.

Size and Form of Tariffs

30. Joint tariffs must be in page or pamphlet form, and of size

8 by 11 inches. Local and interdivision tariffs may be in book form, not larger than 8 by 11 inches, or in single-sheet form of size desired by issuing carrier. Loose-leaf plan may be used so that changes can be made by reprinting and inserting a single leaf.

Local Tariffs

31. Local tariffs may be in one or more books or pamphlets and must show the exact fare from each point to each other point on the lines of the issuing carrier. If desired, certain of the fares which appear in local tariffs may be repeated in interdivision or joint tariffs, but fares so repeated must be the same in every tariff in which they appear.

32. Interdivision tariffs shall show:

(a) The exact fares between each point on one division and each point on the other division or divisions to which the tariff applies; or

(b) The exact fares between each point on a division and the principal points on the other division or divisions to which the tariff applies, together with explicit rules and bases from which to determine the fares to and from each of the less important points on the division or divisions to which the tariff applies and which are not named in the tariff.

33. The title-page of every tariff shall show:

(a) Name of issuing carrier, carriers, or agent.

(b) I. C. C. number of tariff in bold type on upper right-hand corner, and immediately thereunder, in smaller type, the I. C. C. number or numbers of tariffs and supplements canceled thereby. If, however, the number of canceled tariffs is so large as to render it impracticable to thus enter them, they must be shown on following page, but specific reference to such list must be entered on title-page immediately under the number of the tariff. Serial numbers of carrier may, if desired, be entered below the upper marginal line of title-page. Separate serial I. C. C. numbers will be used for freight and passenger tariffs.

(c) Whether tariff is local, interdivision, or joint.

(d) The territory or points from and to which the tariff applies, briefly stated.

(e) Date of issue and date effective. Any tariff may be changed upon statutory notice of thirty days, or, under special permission from the Commission, upon shorter notice. Therefore, a provision in a tariff that the tariff, or any part of it, will expire upon a given date, is not a guaranty that the tariff, or such part of it, will remain effective until that date. The Commission considers such expiration notices undesirable, as many complications have arisen through their being overlooked. Such provision, if used, must be understood to mean that the tariff, or specified part of it, will expire upon the date named unless sooner canceled, changed, or extended in lawful way. On such tariffs the term "Expires ———, unless sooner canceled, changed, or extended," must be used.

(f) Name, title, and address of officer by whom tariff is issued.

(g) On upper left-hand corner the words: "Only one supplement to this tariff may be in effect at any time." (See exception in Rule 52.)

(h) On every tariff or supplement that is issued on less than thirty days' notice by permission from or order or regulation of the Commission, notation that it is issued under special permission or order of the Interstate Commerce Commission, No. —, of date ——— or by authority of Rule —, Tariff Circular —.

(i) On every excursion tariff issued under Rule 52 notation, "Issued Under Authority of Rule 52, Tariff Circular 15-A."

34. Tariffs shall contain, in the order named:

(a) Table of contents, full and complete.

(b) Names of issuing carriers, including those for which joint agent acts under power of attorney, and names of carriers participating under concurrences, both alphabetically arranged. If there be not more than ten participating carriers their names may be shown on the title-page of the tariff. The form and number of the power of attorney or concurrence by which each carrier is made party to the tariff must be shown.

Tariffs containing round-trip excursion fares and instructions as to sale and use of tickets thereunder must show a full list of carriers, parties thereto, or, must give reference by I. C. C. numbers to the tariffs on which such excursion fares are based; must bear notation that the same carriers that are parties to the tariffs so referred to are, under the authorities and concurrences there shown, parties to the excursion fare tariff, and provision that tickets must not be sold thereunder via the line of any carrier that is not specified as party to the tariff or tariffs so referred to.

(c) Alphabetically arranged and complete index of stations from which the tariff applies, and alphabetically arranged and complete index of stations to which the tariff applies, together with the name of State in which located. If there be not more than twelve points of origin and twelve points of destination, they may, if practicable, be shown on title-page of tariff.

Geographical description of application of tariff may be used only when the tariff applies from or to all stations in one or more States or Territories, or when it applies to all points in a State or Territory except those specified. But such list of exceptions for a State may not include more than 30 points. For example, a tariff may state that it applies from all points in New York, Pennsylvania, and New Jersey, and from all points in Delaware except (here give alphabetical list of excepted points), and from the following points in Ohio (here give alphabetical list of Ohio points).

Traffic territorial or group descriptions may be used to designate points to or from which fares named in the tariff apply, provided a complete list of such points arranged by traffic territories or groups is printed in the tariff or specific reference is given to the I. C. C. number of the issue that contains such list. In this list the stations on each line of road must be grouped together alphabetically and under the name of the road. If in naming fares in the tariff, points

of origin and of destination are arranged alphabetically, or alphabetically by States or roads, alphabetical index of stations may be omitted.

The terms "common points," "Southeastern territory," or similar terms shall not be used in any tariff for the purpose of indicating the points from or to which fares named therein apply unless a full list of such points is printed in the tariff or specific reference is given to the I. C. C. number of the issue that contains such list.

(d) Explanation of reference marks and technical abbreviations used in the tariff.

(e) Routing under the tariff. If the fares apply via more than one route or gateway, the route or gateway shall be shown in connection with the fare, or the different routes shall be specified and each route be given a number, in which event the routing to each point of destination named in the tariff will be shown by placing opposite thereto, in a column headed "Route," the proper route number or numbers.

(f) Such explanatory statement in clear and explicit terms regarding the fares and rules contained in the tariff as may be necessary to remove all doubt as to their proper application.

(g) Rules and regulations which govern the tariff, the title of each rule or regulation to be shown in bold type. Under this head all of the rules, regulations, or conditions which in any way affect the fares named in the tariff shall be entered, except that a special rule applying to a particular fare shall be shown in connection with and on the same page with such fare.

No rule or regulation shall be included which in any way or in any terms authorizes substituting for any fare named in the tariff a fare found in any other tariff, or made up on any combination or plan other than that clearly stated in specific terms in the tariff of which the rule or regulation is a part. These rules shall include the general rules governing stop-over privileges and the general baggage regulations, and also schedule of excess-baggage rates, unless such excess-baggage rates are shown in tariff in connection with the fares.

A carrier or an agent may publish, under I. C. C. number, post and file a tariff publication containing the rules and regulations which are to govern certain fare schedules, and such publication may be made a part of such fare schedules by the specific reference "Governed by rules and regulations shown in ——— I. C. C. No. —."

A fare schedule may in like manner refer to another schedule for the governing rules and regulations.

A schedule or a publication so referred to must be on file with the Commission and be posted at every place where a schedule that refers to it is posted.

(h) The fares, explicitly stated, together with the names of the places from and to which they apply, all arranged in a simple and systematic manner. Complicated or ambiguous plans or terms must be avoided.

Tariffs naming fares for excursions may state such fares in such

terms as "One first-class fare for the round trip," "One first-class fare and a third for the round trip," "One first-class fare plus ——— dollars for the round trip."

NOTE.—The aim and tendency will at all times be in the direction of uniformity. It is not considered as practicable or wise to at this time undertake the adoption of a uniform form of stating fares in the several localities where, from peculiarities of conditions and long custom, representatives of carriers and patrons have become well acquainted with certain forms especially adapted to their use and which can easily be made to conform to these general rules. Adoption of a uniform form is a subject of such importance as to warrant the more exhaustive investigation and consideration which is being given to it.

Arrangement of Points in Local Tariffs

35. In naming fares in local passenger tariffs points will be arranged geographically, and the points on main line shall appear first in order, followed by points on branch lines diverging from main line. The points on a branch line will be separated from main line and other branch-line points by a rule. The point of divergence from main line shall be shown at the top of the branch-line points, but fares to and from such point of divergence need not be repeated. Points shown at the top of column of fares will be known as "head-line points," and each column will be designated by a letter, or, if necessary, by a combination of letters or of letters and numerals. Points shown at the side of the columns of fares will be known as "side-line points," and will be numbered consecutively. The alphabetical index of stations provided for in Rule 34 will show the location of fares to or from each station by head-line letters and side-line numbers.

Interdivision tariffs may be arranged geographically or alphabetically, but if arranged geographically the rule in next preceding paragraph will be followed.

Through Tickets When no Joint Fares Apply

36. A carrier may apply to through tickets fares to or from stations to or from which no joint fare is published by using lawfully published bases, locals, or proportionals in connection with other lawfully published tariffs. Tariffs containing basing fares must specify clearly the extent and manner of their use, and tariffs that are especially intended for use in connection with published basing fares must show the I. C. C. numbers of tariffs in which bases can be found.

Tariff or Supplement Shall Specify Cancellations

37. If a tariff or supplement to a tariff is issued which conflicts with a part of any other tariff or supplement to a tariff which is in force at the time, and which is not thereby canceled in full, it shall

specifically state the proportions of such other tariffs which are thereby canceled, and such other tariffs shall at the same time be correspondingly amended in the regular way.

Cancellation Notice Shall Specify Where Fares Will Thereafter be Found

If a tariff or part of a tariff is canceled, the cancellation notice shall make specific reference to the I. C. C. number of tariff in which such fares will thereafter be found or, if combination fares are to apply, shall so state. Cancellation of a tariff also cancels supplement to such tariff, if any in effect. If a tariff is canceled by the issuance of a similar tariff to take its place, cancellation notice must not be given by supplement, but by notice printed in new tariff, as provided in paragraph (b) of Rule 33.

Amendments and Supplements

38. A change in a tariff shall be known as an amendment and shall be printed in a supplement to the tariff which it amends, specifying such tariff by its I. C. C. number. The supplement shall be reissued each time an amendment is made and shall always contain all the amendments to that tariff that are in force. Supplements to a tariff shall be numbered consecutively as supplements to that tariff and not be given new or separate I. C. C. numbers.

If there are more than ten participating carriers it is not necessary that supplement shall contain reproduction of the list of participating carriers shown in the tariff. Supplement may show that the list of participating carriers is "as shown in the tariff, except" (here show all additions to and eliminations from the original list that are effected by the supplement, or that have been effected by previous supplements, each alphabetically arranged).

An amended item must always be printed in supplement in its entirety as amended.

Only One Supplement

There shall at no time be more than one supplement in effect to any tariff, and when the supplement to a tariff of 20 or more pages contains ten per centum of the number of pages contained in the tariff the tariff shall be reissued before further changes in it can be made. (See exception in Rule 40.) The reissuance of a tariff will cancel supplement to such tariff.

No supplement may be issued to any excursion fare tariff that is issued on less than statutory notice under the provisions of Rule 52.

Reissuing Tariff Periodically

If a tariff provides that it shall be reissued periodically at specified times not more than six months apart, and such provision is strictly observed, the supplement to such tariff may contain all amendments made thereto between such specified dates for reissuance.

Withdrawal and Adoption of Tariffs When One Carrier is Absorbed by Another Carrier

In case of change of ownership or control of a carrier the carrier whose line is absorbed, taken over, or purchased by another carrier shall unite with that other carrier in common supplements to the tariffs on file with the Commission, on the one hand withdrawing and on the other hand accepting and establishing such tariffs and all effective supplements thereto. Such common supplements shall be executed jointly by the traffic officers of both the old and new carriers, shall be numbered consecutively as supplements to the tariffs (whether of five pages or less) to which they are directed, and may be made effective on five days' notice to the public and the Commission by noting thereon reference to this rule. Amendments to such tariffs must thereafter be filed in consecutively-numbered supplements thereto until the tariffs are reissued. New tariffs reissuing or superseding these shall be numbered in the I. C. C. series of the new carrier.

Index of Tariffs

39. Each carrier shall publish, with proper I. C. C. number, post, and file a complete index of the tariffs which are in effect and to which it is a party as an initial or a terminal line. Such index shall show: (a) I. C. C. number of each tariff. (b) Name or initials of issuing road or agent. (c) Brief description of character of tariff. (d) Concise statement of points between which tariff applies. Tariffs covering short-time excursion rates and supplements to tariffs need not be included in this index. If any changes are made, this index shall be corrected to date and be reissued each month, or, supplement may be issued each month showing all changes and also what tariff, if any, shown in index is canceled or superseded by one shown in supplement, and index be reissued every six months. If supplements are used they must be constructed in accord with specifications as to construction of index and each supplement must cancel preceding supplement and bring forward all corrections. If carrier so desires, lists of its division sheets, official circulars, and of its own numbers of its tariffs or division sheets may appear in this publication.

NOTE.—This rule is also in rules governing freight tariffs. One index containing both passenger and freight tariffs will be deemed sufficient, but if both are included in one index four copies will be sent to the Commission.

Suspension and Restoration of Rail-and-Water Fares

40. Tariffs containing rail-and-water fares or all-water fares applicable via routes upon which it is necessary to close navigation during a portion of the year may provide for suspension and restoration of the rail-and-water fares and the all-water fares named therein under the following regulations:

(a) The following notation shall appear on the title-page of the tariff:

"The fares named herein for rail-and-water or all-water transportation are subject to suspension at the close of navigation and restoration on the opening of navigation of [here insert the name of the water carrier or carriers specified in the tariff] on notice as provided on page — of this tariff."

(b) In the rules governing the tariff shall appear the following:

"In anticipation of the opening of navigation of [here insert name of water carrier or carriers named in the tariff] restoration of the rail-and-water and all-water fares contained in this tariff and in effective supplement thereto which was in force on the date the fares were last suspended or which has subsequently been made effective, will be announced by supplement to this tariff which will be filed with the Interstate Commerce Commission, be posted at stations from which the fares apply, and become effective not less than three days thereafter."

"The fares in this tariff and in supplement thereto for rail-and-water and all-water transportation are effective only during the season of navigation of [here insert the name of water carrier or carriers named in the tariff]. The supplement announcing the close of navigation and the suspension of rail-and-water and all-water fares named in this tariff and its effective supplement will be filed with the Interstate Commerce Commission and will be posted at stations from which the fares apply not less than three days in advance of the date upon which the fares will be suspended."

(c) Supplements issued under this rule announcing suspension and restoration of rail-and-water and all-water fares in tariffs must not contain anything except such suspension or restoration notice and such supplements will not be counted against the number of supplements that is permitted as to such tariff under Rule 38.

(d) Rail-and-water and all-water fares suspended under this rule may be reissued or amended during such period of suspension upon statutory notice the same as though the fares were in effect and active use, but the restoration of the fares by supplement notice will not advance the effective date of any supplement to the tariff which has not on the date of restoration become effective. Supplements made effective prior to the date of restoration will be made effective on a given date "Subject, however, to restoration of the tariff fares at a subsequent date."

(e) Where the tariff suspended or restored under this rule applies to joint transportation by rail and river, or canal, or inland lakes other than the Great Lakes, such tariff may be suspended or restored on a like notice of one day instead of three days.

(f) Rail-and-water tariffs now under suspension and that have not expired by their terms or been canceled, may be brought within this rule by the issuance of supplements which add to the tariff the provisions of paragraphs (a) and (b) of this rule. Such supplements may be issued under paragraph (c) of this rule, and, until April 15,

1908, may be issued on one day's notice to the public and to the Commission, giving reference to this rule.

Statutory notice of suspension, withdrawal or restoration of fares or regulations must be given as to all tariffs that are not brought within the provisions of this rule.

Filing of Tariffs

41. Tariffs and supplements thereto shall be filed with the Commission by proper officer of the carrier or by an agent designated to perform that duty, and concurrence of every carrier participating therein must be on file with the Commission or accompany the tariff or supplement. If a carrier authorizes an agent to file its tariffs and supplements thereto or certain of them, official notice of such authorization and of acceptance of responsibility by the carrier for his acts, in form as hereinafter specified, must be filed with the Commission. Such notice may be revoked by a carrier upon thirty days' official notice to the Commission, or at any time be transferred to another agent by filing with the Commission notice of such transfer, accompanied by full-form authorization for the newly named agent.

Authorizations for Agent and Concurrences in His Tariffs Must be Filed

If two or more carriers appoint the same person as agent for the filing of tariffs and supplements thereto, each of them will be required to file with the Commission power of attorney, in form prescribed, appointing him their agent; and the concurrence of every other carrier participating in any tariff or supplement thereto which is filed by him must be on file with the Commission or accompany the tariff.

Use of Consolidated Concurrences

When consolidated form of concurrence, PX6, PX7, or PX8 has been used and additions are to be made to the list of roads for which such agent acts under powers of attorney the necessity for a new set of consolidated concurrences presents itself. Trouble and inconvenience can be avoided by the issuance of powers of attorney authorizing such agent to receive concurrences provided in Rules 47, 48, and 49, and the securing of new concurrences will be comparatively simple.

Such joint agent duly authorized to act for several carriers must file joint tariffs under I. C. C. serial numbers of his own.

Issuing Carrier Will File Tariff for all Carriers Party Thereto

Tariffs issued by a carrier under its I. C. C. numbers may include, under proper concurrences shown therein, fares via, and to and from points on, other carriers' lines, and concurring carriers may use such tariffs for posting at their stations. Such tariffs must be filed by the issuing carrier, and such filing will constitute filing for all lawfully concurring carriers.

Avoid Conflict Between Tariffs

A carrier that grants authority to an agent or to another carrier to publish and file certain of its fares must not in its own publications publish fares in conflict with those which are published by such authorized agent or other carrier, or which duplicate such fares except as provided in Rule 31.

The agent or the carrier that issues a joint tariff publication shall at once send copies thereof to each and every carrier that is named as party thereto.

Fares for through tickets are often made by adding together two or more fares. All state or other fares used in combination for interstate movements must be posted at stations and filed with the Commission, and can only be changed as to such traffic in accordance with the terms of the Act. The Commission believes it proper that all local tariffs be given I. C. C. numbers and be posted and filed with the Commission in manner prescribed in the Act.

Tariff Must Show Full Thirty Days' Notice

The Act requires that all changes in fares, or in rules that affect fares, shall be filed with the Commission at least thirty days before the date upon which they are to become effective. Manifestly it is impossible for the Commission to check the items in tariffs to determine whether or not the statutory notice has been given. The title-page of every tariff must show full thirty days' notice, or bear a plain notation of the number and date of the permission, or the rule, or the decision of the Commission under which it is effective on less than statutory notice.

The law affirmatively imposes upon each carrier the duty of filing with the Commission all of its tariffs, and supplements thereto, as prescribed in the law or in any rule relative thereto which may be announced by the Commission, under penalty for failure so to do or for using any fare which is not contained in its lawfully published and filed tariffs. The Commission will give such consistent assistance as it can in this respect, but the fact that receipt of a tariff, or supplement to a tariff, is acknowledged by the Commission, or the fact that a tariff, or supplement to a tariff, is in the files of the Commission, will not serve or operate to excuse the carrier from responsibility or liability for any violation of the law, or of any ruling lawfully made thereunder, which may have occurred in connection with the construction or filing of such tariff or supplement.

Thirty Days' Notice on Every Publication

Full thirty days' notice to the public and to the Commission is required as to every publication which it is necessary for a carrier to file with the Commission, regardless of what changes may or may not be effected thereby. No tariff or supplement will be accepted for filing unless it is delivered to the Commission, free from all charges or claims for postage, the full thirty days required by law before the

date upon which such tariff or supplement is stated to be effective. No consideration will be given to or for the time during which a tariff or supplement may be held by the Post-Office Department because of insufficient postage. A tariff or supplement that is received by the Commission too late to give the Commission the full thirty days' notice required by law will be returned to sender, and correction of the neglect or omission cannot be made which takes into account any time elapsing between the date upon which such tariff or supplement was received and the date of attempted correction. In other words, when a tariff or a supplement is issued and as to which the Commission is not given the statutory notice, it is as if it had not been issued, and full statutory notice must be given of any reissue thereof. No consideration will be given to telegraphic notices in computing the thirty days required. For tariffs and supplements issued on short notice under special permission of the Commission, and short-time excursion tariffs issued under Rule 52, full thirty days' notice is not required, but literal compliance with the requirements for notice named in said rule or in any permission granted by the Commission will be exacted and in accord with the policy and practice above outlined.

Rejected Schedules

When a schedule is rejected by the Commission as unlawful, the records so show and, therefore, such schedule should not thereafter be referred to as canceled, amended, or otherwise except to note on publication issued in lieu of such rejected schedule "In lieu of —, rejected by Commission;" nor shall the number which it bears be again used.

Fares Prescribed in Commission's Decisions Must be Promulgated in Tariffs

Fares prescribed by the Commission in its decisions and orders after hearings upon formal complaints shall, in every instance, be promulgated by the carriers against which such orders are entered in duly published, filed and posted tariffs, or supplements to tariffs.

Permission for Less Than Statutory Time and Notation on Tariff

Unless otherwise specified in the order in the case, such tariff or supplement may be made effective upon five days' notice to the Commission and to the public, and if made effective on less than statutory notice, either under this rule or under special authority granted in the order in the case, shall bear on its title-page notation "In compliance with order of Interstate Commerce Commission in case No.—."

Circulars Announcing Compliance With Orders of Court

Circulars announcing or explaining the attitude and course of carriers under injunction of a court, relating to tariff fares or regulations,

must not be issued as supplements to tariffs nor given I. C. C. numbers unless they are issued on statutory notice or under special permission from the Commission for shorter time. The Commission will, however, be pleased to have copies of such circulars and the information therein contained.

Numerical Order of I. C. C. Numbers of Tariffs, or Explanation of Missing Numbers, Required

Each carrier files tariffs under I. C. C. numbers, which are presumed to be used consecutively. Occasionally a tariff or supplement is received which does not bear I. C. C. number next in numerical order to that borne by the last one filed. This is sometimes occasioned by the missing number having been assigned to a tariff that is in course of preparation. Request is made that in so far as is possible carriers will file tariffs and supplements in consecutive numerical order of I. C. C. numbers. If from any cause this is not done in any instance, the tariff or supplement that is filed with an I. C. C. number that is not consecutive with the last number filed must be accompanied by a memorandum explaining as to the missing number or numbers.

Two Copies of Tariff Must be Filed

On and after April 1, 1907, common carriers and agents are directed, in filing schedules in compliance with the statute, to transmit two (2) copies of each tariff, supplement, or other schedule of fares or regulations for the use of the Commission, both copies to be included in one package and under one letter of transmittal.

Tariffs sent for filing must be addressed "Auditor Interstate Commerce Commission, Washington, D. C."

Form of Appointment of Agent

42. The following form, on paper 8 by 10½ inches in size, will be used in giving authority to an agent to file for the carrier giving the authority, tariffs and supplements thereto. Such authority must not be given to an association or bureau, and it may not contain authority to delegate to another power thereby conferred.

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of carrier in full.]

(Date) ———, ———.

Form PX1—No. —.

Know all men by these presents:

That the [name or carrier] has made, constituted, and appointed, and by these presents does make, constitute, and appoint [name of person appointed] its true and lawful attorney and agent for the said

company, and in its name, place, and stead to file passenger fare schedules and supplements thereto, as required of common carriers by the act to regulate commerce and by regulations established by the Interstate Commerce Commission thereunder, for the period of time, the traffic, and the territory now herein named:

And the said [name of carrier] does hereby give and grant unto its said attorney and agent full power and authority to do and perform all and every act and thing above specified as fully, to all intents and purposes, as if the same were done and performed by the said company, hereby ratifying and confirming all that its said agent and attorney may lawfully do by virtue hereof and assuming full responsibility for the acts and neglects of its said attorney and agent hereunder.

In witness whereof the said company has caused these presents to be signed in its name by its ——— president and to be duly attested under its corporate seal by its secretary, at ———, in the State of ———, on this ——— day of ———, in the year of our Lord nineteen hundred and ———.

Attest:

By ——— THE [name of carrier],
Its ——— President.

—————, Secretary.
[CORPORATE SEAL.]

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the agent to whom power of attorney is given. Separate authorizations will be given for freight and passenger tariffs.

Form of Concurrence

For concurrence in tariffs issued and filed by another carrier or its agent, forms prescribed in Rules 43 to 49, inclusive, will be used. Concurrences must be given to carriers named therein and authority so granted to a carrier may be by it delegated to its lawfully appointed agent.

All concurrences must be on paper 8 by 10½ inches in size.

Separate concurrences will be given for freight and passenger tariffs.

NOTE.—Experience has demonstrated that it is simpler and better to use concurrence than power of attorney in giving authority to a carrier to publish and file another carrier's fares. Provision for giving power of attorney to another carrier has therefore been eliminated

except for the purpose of granting authority to give concurrences as provided in Rule 50.

This does not invalidate or change the terms or effect of any power of attorney now on file.

43. The following form will be used in giving concurrence in a tariff that is issued and filed by another carrier or its agent and to which the carrier giving concurrence is a party. If given to continue until revoked, it will serve as continuing concurrence in the tariff described in the concurrence and all supplements to and reissues thereof. If provision for concurrence to continue until revoked is stricken out, a new concurrence will be required with each supplement or reissue.

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of carrier in full.]

GENERAL PASSENGER DEPARTMENT,
(Date) ———, ———.

Form PX2—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of the fare schedule described below, together with supplements thereto and reissues thereof which the named issuing carrier or its agent may make and file, and hereby makes itself a party thereto and bound thereby, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

Title and number. [Here give exact description of title of schedule, including number and name of series.]

Date of issue: ———.

Date effective: ———.

Issued by { [Official.]
 { [Company.]

[Name of carrier.]
By [Name of officer.]
[Title of officer.]

This form will be filed with the Commission by the carrier or agent who files the tariff and will accompany the tariff.

Form of Concurrence

44. Concurrence may be given by a carrier to embrace all tariffs issued by another carrier or its agent in which the concurring carrier is shown as a participating intermediate or terminal line, and after the following form:

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of carrier in full.]

GENERAL PASSENGER DEPARTMENT,

(Date) ———, ———.

Form PX3—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any passenger-fare schedule or supplement thereto, which the [name of carrier] or its agent may make and file, in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains fares applying via its line and to, but not from, points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the carrier to which concurrence is given. This form must not be qualified in any way except to show what agents have been given power of attorney and to provide that tariffs shall not be issued under the concurrence covering traffic provided for in tariffs issued by such agents.

Round-trip Excursion Fares Included in Concurrence

Concurrences PX3 cover all fares issued by carrier to which given and which apply via the line of, and to but not from stations located upon the line of the carrier giving the concurrence. This is intended to reserve to the initial carrier the quotation of fares upon traffic originating on its line except when by use of another form of concurrence or power of attorney it grants authority to some other to quote such fares.

Round-trip excursion fares are not, however, considered as applying to traffic originating at the points where the return journey begins. Concurrences PX3 are, therefore, considered and held to include concurrence in round-trip excursion fares, stated in specific figures or in some such term as "one fare for the round trip."

Form of Concurrence

45. Concurrence may be given by a carrier in tariffs issued by another carrier or its agent applying fares to or from its stations or via its lines, to certain described points or territories, and after the following form, modified as may be necessary to confer exactly the authority intended to be granted. For granting authority to pub-

lish and file fares to and from and via its lines, and not otherwise qualified, carriers will use concurrence form PX5 or PX7, as per Rules 46 and 48.

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of carrier in full.]

GENERAL PASSENGER DEPARTMENT,

(Date) ———, ———.

Form PX4—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any passenger-fare schedule or supplement thereto which the [name of carrier] or its agent may make and file and in which this company is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains fares applying upon ———; or between ——— and ———; or from ——— to ———; or via ———; until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the carrier to which concurrence is given.

Form of Concurrence

46. Concurrence may be given by a carrier in tariffs issued by another carrier or its agent applying fares to and from its stations, and via its lines, and after the following form:

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of carrier in full.]

GENERAL PASSENGER DEPARTMENT,

(Date) ———, ———.

Form PX5—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any passenger-fare schedule or supplement thereto which the [name of carrier] or its agent may make and file, and in which this company is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains fares applying to and from stations on its

lines, and via its lines, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

[Name of carrier.]
By [Name of officer.]
[Title of officer.]

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the carrier to which concurrence is given. This form must not be qualified in any way, unless to show what agents have been given powers of attorney and to provide that tariffs shall not be issued under the concurrence covering traffic provided for in tariffs issued by such agents.

Form of Concurrence

47. If two or more carriers appoint the same person as agent for the publication and filing of tariffs and supplements thereto under powers of attorney form PX1, concurrence in tariffs issued by him under such authority may be in the following form:

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of carrier in full.]

GENERAL PASSENGER DEPARTMENT,
(Date) ———, ———.

Form PX6—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any passenger-fare schedule or supplement thereto which the [here give list of all roads for which the agent has powers of attorney], or either of them, may make and file through their agent and attorney [name of agent], and in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such tariff contains fares applying via its line, and to but not from points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given, or of its agent and attorney herein named.

[Name of carrier.]
By [Name of officer.]
[Title of officer.]

Filing

Carrier issuing this form will file the original with the Commission and will furnish duplicate to each of the carriers named in the concurrence, or, if each of those carriers has given said agent power of

attorney to receive for its concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicates to each and every carrier represented by him.

Form of Concurrence

48. If two or more carriers appoint the same person as agent for the publication and filing of tariffs and supplements thereto under powers of attorney form PX1, concurrence in tariffs issued by him under such authority may be in the following form:

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of carrier in full.]

GENERAL PASSENGER DEPARTMENT,
(Date) ———, ———.

Form PX7—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of carrier], assents to and concurs in the publication and filing of any passenger-fare schedule or supplement thereto which the [here give list of all roads for which the agent has powers of attorney], or either or any of them, may make and file through their agent and attorney [name of agent], and in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains fares applying via its line, and to and from points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given, or of its agent and attorney herein named.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

Filing

Carrier issuing this form will file the original with the Commission and will furnish duplicate to each of the carriers named in the concurrence, or, if each of those carriers has given said agent power of attorney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicates to each and every carrier represented by him.

Form of Concurrence

49. If two or more carriers appoint the same person as agent for the publication and filing of tariffs and supplements thereto under powers of attorney form PX1, concurrence in tariffs issued by him

under such authority applying to or from certain points or territory may be issued in the following form modified so as to confer exactly the authority desired.

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of carrier in full.]

GENERAL PASSENGER DEPARTMENT,
(Date) ———, ———.

Form PX8—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any passenger-fare schedule or supplement thereto which the [here give list of all roads for which the agent has powers of attorney] or either or any of them, may make and file through their agent and attorney [name of agent], and in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains fares applying from ——— to points on or reached via its line; or from points on or via its line to ——— until this authority is revoked by formal and official notice of revocation placed in the hands of the Interstate Commerce Commission and of the carriers to which this concurrence is given, or of their agent and attorney herein named.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

Filing

Carrier issuing this form will file the original with the Commission and will furnish duplicate to each of the carriers named in the concurrence, or, if each of those carriers has given said agent power of attorney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicates to each and every carrier represented by him.

NOTE.—Concurrence, form PX2, applies to individual publication named therein. Concurrence, form PX3 or PX6, confers authority to publish and file fares to, but not from, stations on line of concurring carrier and via its lines. Concurrence, form PX5 or PX7, confers authority to publish and file fares to and from stations on line of concurring carrier and via its lines. Forms PX3, PX5, PX6, and PX7 are not to be modified except as specified in the rules. The use of these several forms as provided will, therefore, show by the form number just what authority has been given except when form PX4 or PX8 is used, these forms being provided for instances which the other forms do not exactly fit. The Commission does not require the substitution of concurrence form PX5 for form PX4, now on file, which covers only the authority provided for in the new-form PX5, but will welcome such substitution. For all new concurrences

forms will be used as specified in the several rules, and PX4 or PX8 only when neither of the other forms provides for the authority it is desired to confer.

Numbers of Concurrences and Authorizations

50. Each carrier will give authorizations and concurrences serial numbers, beginning with No. 1 in each series, as indicated by forms, and continuing in consecutive numbers as to each series, and keeping these numbers separate and apart from I. C. C. numbers of tariffs.

Printing and Use of Authorizations and Concurrences

It is suggested that, for convenience in reference and filing, the powers of attorney and concurrences be printed in triplicate, consisting of a "stub," to be retained by issuing carrier; an "original," to be filed with the Commission; and a "duplicate," to be furnished to the agent to whom power of attorney is given or to carrier to which concurrence is given.

Revocation Effective

Notice of revocation of a concurrence will become effective forty days from the date upon which such notice is filed with the Commission and served upon the carrier to which concurrence was given.

Subsidiary or Small-line Tariffs

Subsidiary or small lines which do not wish to issue concurrences or tariffs may give to the parent or other line power of attorney to concur in tariffs, and also general concurrence PX4 or PX5, to file tariffs, and the carrier holding such authority and concurrence may give and also receive concurrence for itself and the lines for which it acts in one instrument. Such subsidiary or small lines must, however, be named in concurrences so given.

Conflicting Authority to be Avoided

In giving concurrences care must be taken to avoid probability of two or more agents or carriers naming conflicting fares or rules.

The granting of authority to issue tariffs under power of attorney or general concurrence, does not relieve the carrier conferring the authority from the necessity of complying with the law with regard to posting tariffs. It may use tariffs issued under its authority for that purpose.

Letter of Transmittal

51. All tariffs that are filed with the Commission will be accompanied by a letter of transmittal, on paper 8 by 10½ inches in size, and to the following effect:

[Name of carrier.]

GENERAL PASSENGER DEPARTMENT,

(Date) ———, ———.

Advice No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

Accompanying schedule is sent you for filing in compliance with the requirements of the act to regulate commerce, issued by ———, bearing—

I. C. C. No. —;

Supp. No. — to I. C. C. No. —;

Effective ———, 190—;

and is concurred in by all carriers named therein as participants under continuing concurrences or authorizations now on file with the Interstate Commerce Commission, except the following-named carriers, whose concurrences are attached hereto:

(Signature of filing agent.)

A separate letter may accompany each schedule, or the form may be modified to provide for filing under one letter as many schedules as can be conveniently entered.

NOTE.—If receipt for accompanying schedule is desired, the letter of transmittal must be sent in duplicate, and one copy will be stamped and returned as receipt.

ADMINISTRATIVE RULINGS AND OPINIONS

Round-trip Excursion Fares

52. (Issued October 12, 1906.) It is the opinion of the Commission that the provisions of the amended sixth section in respect of the publishing, filing, and posting of tariffs apply to the mileage, excursion, and commutation fares authorized by the twenty-second section. Such a fare when first established or offered is held to be a change of fare which requires a notice of thirty days. No reason appears why this notice should not be given in the case of mileage fares, commutation fares, round-trip fares, or other reduced fares which, like ordinary passenger fares, are established for an indefinite period and appear to be a matter of permanent policy. Strictly excursion fares, however, covering a named and limited period, are of a different character in this regard and may properly be established on much shorter notice.

To avoid the necessity for special application in cases of this kind, the Commission has made a general order fixing the following-named time of notice of round-trip excursion fares, and carriers may govern themselves accordingly:

Fares for an excursion limited to a designated period of not more than three days may be established, without further notice, upon posting a tariff one day in advance in two public and conspicuous places in the waiting room of each station where tickets for such excursion are sold and mailing a copy thereof to the Commission.

Fares for an excursion limited to a designated period of more than three days and not more than thirty days may be established upon a like notice of three days.

Fares for a series of daily excursions, such series covering a period not exceeding thirty days, may be established upon like notice of three days as to the entire series, and separate notice of the excursion on each day covered by the series need not be given.

Fares for an excursion limited to a designated period exceeding thirty days will require the statutory notice unless shorter time is allowed in special cases by the Commission.

Definition of Term " Limited to a Designated Period "

The term "limited to a designated period" used above is construed to cover the period between the time at which the transportation can first be used and the time at which it expires. If tariff names different selling dates for excursions which form a series, and the period of time between the first selling date and the last date upon which any tickets sold under the tariff may be used exceeds thirty days, the series of excursions so provided for do not

come within the period of "not exceeding thirty days," and such tariff may not be issued by authority of this rule. But it is permissible to establish fares for two or more distinct and separate excursions to various points and for various occasions, each such excursion limited to a designated period of not more than thirty days, and for convenience of public and agents to announce them in a bulletin tariff under this rule. It is also permissible to show in such bulletin fares for a series of excursions between the same points, such series covering a period of more than thirty days, provided full statutory notice of such series is thereby given, and provided title-page of publication bears notation "Effective ——— except as noted in individual items as to which full statutory notice is given." When such items are brought forward to another issue of bulletin they must bear notation "First announced in Bulletin No. —. I. C. C. No. —, of ———, 190—."

No Supplement to Tariff Under This Rule

No supplement may be issued to any tariff that is issued under this rule and title-page of tariff must so state. Every such tariff must bear notation on title-page "Issued by authority of Rule 52, Tariff Circular 15A."

Round-trip Tickets on Certificate Plan

53. (Issued December 21, 1906.) Round-trip tickets on the certificate plan may be issued at reduced fares and their use be confined to the delegates to a particular convention or to the members of a particular association or society, upon the condition that a certain number of such tickets shall be presented for validation for return trip before the reduced fare for return trip will be granted to any. Tariffs of fares and regulations governing issuance and use of round-trip tickets on certificate plan must be regularly filed and posted, and the regulations must not be such as will operate to evade or nullify any provision of the law.

The Commission suggests that the rule should provide that not less than one hundred tickets shall be presented for validation for return trip before reduced fare will be granted to any.

Round-trip tickets on certificate plan may also be issued to Government employees going home to vote and returning to their employment.

It is represented that in many instances persons desiring to attend on some particular day of the convention are prevented from promptly returning to their homes because the minimum number of tickets required has not been presented for validation. Answering numerous inquiries, the Commission expresses the opinion that it would not be unlawful or improper for carriers to accept a satisfactory guaranty or bond of an association or society, *which is entitled to and for which the round-trip fare is made*, that the minimum number of tickets will be validated or the difference between the reduced fare and the full fare paid by the association or society, thus per-

mitting the prompt validation of tickets and reduced-return-trip fare, it being understood that if the specified number of tickets be not validated the society will, in good faith, be required to pay the difference agreed upon.

Changes in Rates or Fares

54. (Issued March 18, 1907.) Section 6 of the Act as amended June 29, 1906, provides that—

“No change shall be made in the rates, fares, and charges, or joint rates, fares, and charges, which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule *then in force* and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by *printing new schedules*, or shall be plainly indicated *upon the schedules* in force at the time and kept open to public inspection.”

Rate and Fare Changes Filed and Published Must Become Effective— Rates or Fares in Force can Only be Changed on Thirty Days' Notice

This provision plainly refers to rates and fares which have already become effective, and also applies the term “proposed changes” to rates and fares which have not become effective. It follows that after notice of a change in rates or fares has been filed and published the new rates or fares must be allowed to go into effect, and cannot be withdrawn, canceled, or superseded except upon notice filed and published for at least thirty days after the date when the rates or fares have become effective. A tariff may contain a notation that rates or fares therein stated will expire upon a date therein specified which is at least thirty days subsequent to the date on which such rates or fares become legally effective, and this will be legal notice of the cancellation or withdrawal of such rates or fares. Any tariff may be changed upon statutory notice of thirty days, or, under special permission from the Commission, upon shorter notice. Therefore a provision in a tariff that the tariff or any part of it will expire upon a given date is not a guaranty that the tariff, or such part of it, will remain effective until that date. Such provision must be understood to mean that the tariff, or specified part of it, will expire upon the date named unless sooner canceled, changed, or extended in lawful way.

For Good Cause, Commission May Allow Exceptions

Carriers must comply fully with the requirements of the law respecting the filing, publication, and taking effect of proposed rates and fares, unless upon application and for good cause shown the Commission, in the exercise of authority conferred upon it, shall allow rates or fares to be changed or withdrawn upon less than

thirty days' notice, or by formal order otherwise modify such requirements. No regulation or rule of the Commission is authority to change rates or issue tariffs on less than statutory notice unless so specifically provided in the rule or regulation.

Joint Rate or Fare Greater or Less Than Sum of Locals

55. (Issued September 15, 1906.) Two or more connecting carriers may establish a joint rate or fare only upon notice of thirty days or under special permission. A joint rate or fare when duly established and in force becomes the only lawful rate or fare for through transportation.

A through rate or fare from point of origin to destination of a shipment or passenger is the lawful rate or fare applicable to that movement, whether the rate or fare be confined to the line of one carrier or be a joint rate or fare applying over the lines of two or more carriers. (See Rules 5 and 36.)

Reduction of Joint Rate or Fare to Equal Sum of Locals

56. (Issued December 21, 1906.) Where a joint rate or fare is in effect by a given route between any points which is higher than the sum of the locals between the same points, by the same or another route, and such joint rate or fare has been in effect thirty days or longer, such higher joint rate or fare may, until further notice from the Commission, be changed by reducing the same to the sum of such locals, but not otherwise, upon posting and filing with the Commission one day in advance a *supplement to the tariff in which the joint rate or fare so reduced appears*, which supplement shall show the reduced rate or fare; shall bear notation that it is effective on less than statutory notice "by authority of Rule 56 of Tariff Circular 15-A"; shall show on title-page, or in connection with such item, by identifying references and I. C. C. numbers, the tariffs that contain the locals which make up the new joint rate or fare; except that, if the joint rate so reduced is contained in a strictly class rate tariff, the reduced rate will be published in a supplement to or reissue of a tariff which contains commodity rates and in which all carriers whose lines make up the route over which the rate applies have concurred, and which is issued by the same carrier or agent that issued the tariff which contained the joint rate so reduced. Such supplement or reissue must bear on its title-page, or in connection with such item, the notation: "Issued under authority of Rule 56, Tariff Circular 15-A. The joint rate (or rates) hereby reduced appears in ——— tariff, I. C. C. No. ———, and the factors from which the new rate herein shown as equaling the sum of the locals are found in ——— tariff, I. C. C. No. ———, and ——— tariff, I. C. C. No. ———."

Except when a new commodity rate is established to supersede a higher class rate this rule limits the authority to change rates or fares thereunder to changes that are announced in supplements to the tariffs in which the joint rates or fares so reduced appear, and

each such supplement shall show specifically on its title-page the authority under which it is made effective on less than statutory notice and definite and distinct reference to the locals which are used to make up the reduced joint rate or fare.

Through Rate or Fare Higher Than Sum of Locals Prima Facie Unreasonable

Many informal complaints are received in connection with regularly established through rates or fares which are in excess of the sum of the locals between the same points. The Commission has no authority to change or fix a rate or fare except after full hearing upon formal complaint. It is believed to be proper for the Commission to say that if called upon to formally pass upon a case of this nature it would be its policy to consider the through rate or fare which is higher than the sum of the locals between the same points as prima facie unreasonable and that the burden of proof would be upon the carrier to defend such higher through rate or fare.

New Roads

57. On newly constructed lines of road, including branches and extensions of existing roads, individual rates and fares and also joint rates and fares may be established in the first instance by the carrier owning or operating such newly constructed line to and from points on such new line by posting a tariff of such rates or fares and filing the same with the Commission one day in advance. Such tariff must bear notation that it applies to stations on newly constructed line to or from which no rates or fares have theretofore applied, and give reference to this rule. Tariffs or supplements to tariffs issued by other carriers or joint agents establishing rates to or from or via such newly constructed line may be issued only under statutory notice or special permission for shorter time. It will be the Commission's policy to grant permissions in such instances so as to give the carrier and shippers fullest efficiency of such new lines, and in connection with the preparation of such joint publications there is ample time within which to secure such permission.

Requests for Permission to Amend Tariffs on Less Than Statutory Notice

58. (Issued November 16, 1906.) The Act authorizes the Commission, in its discretion and for good cause shown, to permit changes in tariff rates or fares on less than the statutory notice. It is believed that this authority should be exercised only in instances where special or peculiar circumstances or conditions fully justify it. Confusion and complication must follow indiscriminate exercise of this authority. Applications for permission to change tariffs on short notice are received in indefinite and informal ways and over the signatures of many different officials. Some telegraphic requests are received which make no mention of verified copies and which are not followed

by verified copies, as per rule previously made by the Commission. The Commission therefore announces that applications for permission to change tariffs on less than statutory notice shall be addressed to the Interstate Commerce Commission, in form specified by the Commission under date of September 17, 1906, or such amended form as may be prescribed by the Commission, and must be over signature of the president, vice-president, general traffic manager, assistant general traffic manager, general freight agent, or general passenger agent, specifying title.

The Commission requests that as far as possible these applications be sent by mail and not by telegraph. Action will be taken only on receipt of the verified application.

Where Full Notice Was Given by Competing Carrier

(Issued September 29, 1906.) Desire to meet the rates or fares of a competing road or line which has given the full statutory notice of change in rates or fares will not of itself be regarded as good cause for allowing changes in rates or fares on a notice of less than thirty days.

Amendment of Joint Tariffs on Less Than Statutory Notice

(Issued March 18, 1907.) A request from one carrier, party to a joint tariff, for permission to amend such tariff on less than statutory notice necessarily raises some question of doubt as to the wishes or concurrence of other interested carriers also parties to the tariff. It is desirable and proper that any such permission given by the Commission should affect alike all parties to the tariff that is to be amended under it. The Commission therefore decides:

Applications by Carrier or Agent Authorized to File the Tariff

That when a carrier gives an agent authority to file tariff or tariffs and supplements thereto in its name, place, and stead, or concurrence in tariff or tariffs and supplements thereto which another carrier or its agent may file thereunder, the agent or carrier to whom such authority or concurrence is given has, under the terms of the authority or concurrence, the power and the right to request, in the name and on behalf of the carriers participating in such tariff or tariffs, permission to amend same on less than statutory notice.

Request Must Come From One Who Issues the Tariff

Such requests as to joint tariffs must be made by the agent or the carrier that is authorized to file the tariff and in making them form same as that prescribed for use of individual carrier shall be used, except that the request must state that it is made in the name and on behalf of all carriers that are parties to the tariff, and that formal authority to file the tariff, or formal concurrence in the tariff, is on file with the Commission from each of such carriers.

Concurring Carriers Bound by Act of Authorized Agent

Request will be signed and verified by the agent or officer who makes it, and every carrier that has, by formal authority or concurrence, made itself a party to such tariff will be held bound by the act of its agent under such authority or by its concurrence. This rule will, in so far as is possible, be applied to tariffs now on file, and will be effective in all cases as to freight tariffs from and after May 1, 1907, and as to passenger tariffs from and after June 1, 1907.

Permission to Change Rates or Fares on Short Notice Limited to Emergency or Necessity

This authority will be exercised only in cases where actual emergency and real merit are shown. Clerical or typographical errors in tariffs constitute good cause for the exercise of this authority, but every application based thereon must plainly specify the omissions or mistakes and be presented with reasonable promptness after issuance of the defective tariff.

Division of Joint Rates or Fares—Contracts and Agreements for Must be Filed

59. (Issued November 16, 1906.) A contract, agreement, or arrangement between common carriers governing the division between them of joint rates or fares on interstate business is a contract, agreement, or arrangement in relation to traffic within the meaning of section 6 of the Act to regulate commerce, and a copy thereof must be filed with the Commission. Where such contract, agreement, or arrangement is verbal or is contained in correspondence between the parties or rests on their custom and practice, a memorandum of its terms must be filed with the Commission.

Answering many inquiries as to just what is desired under this rule, the Commission states that when the agreement or arrangement under which divisions are made is in the form of a contract or formal agreement or recorded memorandum a copy of each such contract, agreement, or memorandum is to be filed with the Commission. Where such arrangement is made by correspondence or verbally, a concise memorandum of the basis and general terms and application or the arrangement or practice is to be filed with the Commission. The filing of the division sheets themselves is not desired.

Diverting Traffic Because of Blockades

60. (Issued March 18, 1907.) Whenever, by reason of blockade upon the line of a carrier resulting from storm, washout, wreck, or similar casualty, it becomes necessary for it to divert to the line of another carrier passengers or freight that are in transit, the carrier so diverting its business should pay the carrier or carriers upon whose train such passengers or freight are carried regular tariff rates or fares from and to the points between which it or they transport such

diverted traffic, except that if the carrier accepting such diverted traffic is participant in a joint tariff in which the diverting line is also a participant and under which the diverted traffic is being moved, settlement may be made on basis of the division of the through joint rate or fare.

Detoured or Special Trains, Account of Blockade

If because of such blockade a carrier's train is detoured over the line of another carrier, or special train is arranged for movement of the interrupted traffic, the tariff rates or fare, if there be any for such movement, must be applied. In the absence of such tariff regulations compensation should be agreed upon.

This rule does not apply in cases of congested lines due to heavy traffic or ordinary causes.

Equalizing Rules or Tariffs

61. (Issued March 18, 1907.) In the not distant past many carriers issued circulars or tariff rules which in effect and substance stated that that carrier would meet any rate or fare made by a competitor or share in any through rate or fare made by a connecting carrier for the purpose of meeting or protecting any rate or fare via another route or gateway. Those rules plainly intended and contemplated that rates or fares which were not found in that carrier's tariffs should be applied to traffic moving over its lines.

The law makes it clear that no carrier can lawfully apply to transportation over its lines any rate, fare, or charge that is not plainly stated in its own tariffs at that time, and that all such rules as are now referred to and all practices under such rules are unlawful.

Free Transportation of Passengers in Connection With Shipments of Property

62. (Issued November 6, 1906.) Section 1 of the act provides that free transportation may be furnished "to necessary caretakers of live stock, poultry, and fruit." This provision in the statute is construed to mean necessary caretakers of live stock, poultry, or fruit that is loaded and ready for movement, or the movement of which is actually contracted for or that is actually in transit, and may include free or reduced fare transportation for the return of such necessary caretakers. This transportation may be in the form of free pass or reduced fare transportation, but in any event it must be the same for all under like circumstances and must be published in the tariff governing transportation of the commodity. Tariff may provide that caretaker sent out to return with shipment that is arranged for or that is in transit will be required to pay fare going and that such fare will be refunded if person so sent does return as actual caretaker of shipment for which he is sent. But a tariff rule which provides that if a person goes out over the line with the intention of purchasing live stock and returns within a certain time with a certain

number of cars of live stock the carrier will refund to him the fare paid on outgoing trip is improper and unlawful.

Includes Vegetables

The Commission is of the opinion that the term "fruit" in this connection includes perishable vegetables when shipped under conditions that render caretakers "necessary."

Free Passes and Free Transportation

63. (Issued October 12, 1906.) The provisions of the act relative to the issuance of free tickets, free passes, free transportation, or free carriage to employees of carriers apply only to persons who are actually in the service of the carriers and who devote substantially all of their time to the work or business of such carriers. Land and immigration agents, unless they are bona fide and actual employees, representatives of correspondence schools, agents of accident or life insurance companies, agents of oil or lubricating companies, etc., are not within the classes to which free or reduced fare transportation can be lawfully furnished.

Business or Duty of the Carrier

But the Commission does not construe the law as preventing a carrier from giving necessary free transportation to a person traveling over its line solely for the purpose of attending to the business of or performing a duty imposed upon the carrier, nor from giving free carriage over its line to the household and personal effects of an employee who is required to remove from one place to another at the instance of or in the interest of the carrier by which he is employed.

Contract Work on Carrier's Own Line

Nor does the Commission construe the law as preventing a carrier from giving free or reduced-rate carriage over its line to contractors for material, supplies, and men for use in construction, improvement, or renewal work on the line of that carrier, provided such arrangements for free or reduced-rate carriage are made a part of the specifications upon which the contract is based and of the contract itself.

Ministers of Religion—Their Families—Government Officials and Families

The provisions of the act relative to the issuance of free or reduced fare transportation to ministers of religion do not apply to or include members of the families of ministers of religion. Neither do the provisions of the act relative to the issuance of free or reduced fare transportation admit of including therein officers of the Government, the Army, or the Navy, or members of their families, or other persons

to whom such considerations may have been extended in the past, unless they are within the classes specifically named in the act.

Reduced Rate or Fare Transportation

Reduced rate or fare transportation may be granted to such persons as are specified in the law as those to whom free transportation may be given.

Granting Reduced Rates or Fares Without Providing Tariff for Same

Section 22 of the act authorizes carriers to grant free or reduced rate transportation of property for the United States, state, or municipal governments, or for charitable purposes or for exhibition at fairs and expositions. It also authorizes free or reduced fare transportation of certain specified persons. This special provision and the words "reduced rates" are construed to be special authority for carriers to depart from established tariff rates or fares; and for such transportation as is provided for in said section 22 it is not necessary for carriers to provide tariffs or observe tariff rates or fares and regulations excepting in the issuance, sale, and use of mileage, excursion, or commutation passenger tickets, and joint interchangeable mileage tickets. As to these the provisions of section 6 with regard to publishing, filing, posting, and observing tariffs must be complied with.

Reduction May Not be Made Through a Third Party

Reduced rates or fares may be granted to the United States, state, or municipal governments only in instances in which the transaction is directly between the carrier and such government, and may not include those in which a contractor or other third person or party is interested.

Transportation of Men or Property for Telegraph Companies

64. (Issued June 3, 1907.) In its decision on the petition of the Western Union and Postal Telegraph companies, issued December 27, 1906, the Commission held it would be unlawful for a carrier subject to the act to contract or stipulate with a telegraph company for the carriage of its officials, employees, or property for any greater or less or different compensation than that specified in the regularly published tariffs in effect at the time, except in connection with the construction, operation, and maintenance of telegraph line and service on its own line. It was held that a group of separately incorporated roads, recognized as a "railway system," may be considered as one in the making of contracts for telegraph service on that system.

This definitely differentiates between the employees of the telegraph company who are actually engaged in constructing and maintaining a telegraph line along the line of a railway, or in operating such telegraph line as a part of the actual operation of that railway, and those who are engaged in the commercial business of the telegraph

company. The fact that railway officials may, by use of D. H. franks, send messages on railway business from or receive such messages at a commercial office of a telegraph company does not constitute that office a part of the operation of any of the lines of railway which such officials represent, nor bring that telegraph office into such relationship with the business of the railways as to warrant treating it as part of the operating facilities of such railways. Practically all telegraphing so done is "off the line" business and is to be considered as commercial business. The same distinction is to be observed in the hauling of materials and supplies for telegraph companies with which the railway company has contract for telegraphic service.

File Copies of Contracts

(Effective November 15, 1907.) This rule applies also to telephone service, and carriers that have not already done so are hereby requested and called upon to promptly file with the Commission copies of all contracts for telegraph or telephone service on their lines.

Transportation of Newspaper Employees on Special Newspaper Train

65. In its decision of January 21, 1907, on the petition of certain newspapers in New York City, the Commission decided that a commodity rate may not be applied to the transportation of passengers or a passenger fare to the transportation of a commodity, and that therefore employees of the newspapers riding on special newspaper trains cannot lawfully be transported under a commodity rate established for the carriage of newspapers or at any rate other than the one specified in the regularly published schedule of passenger fares.

Free Transportation of Officers or Employees of Omnibus or Baggage Express Companies

66. In its decision of March 25, 1907, on the petition of the Frank Parmalee Company, the Commission held that a carrier subject to the act cannot lawfully give free transportation to officers, agents, or employees of an omnibus or baggage express company, except, as authorized in the act, for baggage agents who meet passenger trains at some point near the larger cities and go through the trains to arrange for transfer of passengers and their baggage.

Payment for Transportation

67. (Issued September 15, 1906.) Nothing but money can be lawfully received or accepted in payment for transportation subject to the Act, whether of passengers or property, or for any service in connection therewith, it being the opinion of the Commission that the prohibition against charging or collecting a greater or less or different compensation than the established rates or fares in effect at the time precludes the acceptance of services, property, or other

payment in lieu of the amount of money specified in the published schedules.

Party Fare Tickets

68. (Issued September 29, 1906.) The tariffs and regulations governing the issuance and use of party fare tickets, together with the rules relating to the allowance of free baggage to persons using such tickets, must be regularly filed and published. The privileges so extended must not be limited to any particular class or classes of persons, but must be open to all. Regulations governing issuance and use of party fare tickets must not be such as will operate to evade or nullify any provision of the law. The Commission suggests that the rules should provide that the party shall travel on one ticket and consist of not less than ten persons.

(Issued November 15, 1907.) Carriers may provide in their tariffs as follows:

"When a party of ten (10) or more persons are traveling on a party fare ticket and require the exclusive use of a baggage car, and such baggage car is not forwarded upon the same train which bears the passengers, and where it is necessary that one or more men of the party shall accompany the baggage car, a separate ticket may be issued for the use of such men as members of the party, provided such ticket is indorsed as a part of such party fare ticket and for, and limited to, the train upon which the baggage car is hauled."

It is not, however, lawful or permissible to permit person or persons to go in advance of or to follow the party as passengers and be computed as a part of the party or as entitled to the party fare. All tariff provisions to such effect are unlawful and must be withdrawn at once.

Transportation of Circus Outfits

69. (Issued March 18, 1907.) The Act to regulate commerce, as amended June 29, 1906, applies to the transportation of circuses and other show outfits, but the Commission recognizes the peculiar nature of this traffic and the difficulty of establishing rates thereon in advance of shippers' request describing the character and volume of the traffic offered, and has therefore entered a general order authorizing carriers to establish rates on circuses and other show outfits by tariff, to become effective one day after filing thereof with the Commission, and relieving them from the duty of posting such tariffs in their stations. Such tariff may consist of a proper title-page reading "as per copy of contract attached," and to it may be attached a copy of the contract under which the circus is moved. As far as practicable general rules or regulations governing the fixing of such rates should be regularly published and filed.

Routing and Misrouting Freight

70. (Issued March 18, 1907.) Alleged neglects or errors on part of agents of carriers in misrouting shipments lead to numerous claims

of overcharge, many of which are meritorious. The lawful charge on any shipment is the tariff rate via the route over which the shipment moves. No carrier can lawfully refund any part of the lawful charge except under authority so to do from the Commission or from a court of competent jurisdiction. That thorough understanding and uniform practice may be had in this connection, the Commission issues the following administrative ruling:

Shipper May Direct Terminal Routing or Delivery and Choose Between Available All-rail and Rail-and-water Routes

In order to secure desired delivery to industries, plants, or warehouses and avoid unnecessary terminal or switching charges, the shipper may direct as to terminal routing or delivery of shipments which are to go beyond the lines of the initial carrier; and his instructions as to such terminal delivery must be observed in routing and billing such shipments. The carriers may not disregard the instructions of shippers as to intermediate routing, except when tariff of initial line reserves the right to carrier to dictate intermediate routing. When such reservation is made in tariff, (1) where all-rail rates and rail-and-water rates are available, the agent of carrier must have the shipper designate which of the two he wishes to use; and (2) the agent must not route shipment via a route that will be more expensive to the shipper than the one desired by him, or that does not furnish substantially as good and expeditious service. If carrier is not willing to observe the intermediate routing instructions of shipper it must not execute bill of lading containing such routing. Carriers will be held responsible for routing shown in bill of lading.

Of Designated Class of Routes—All-Rail or Rail-and-Water—Shipper is Entitled to Cheapest Route in Absence of Specific Instruction

In the absence of specific through routing by shipper, which carrier is willing to observe, it is the duty of the agent of the carrier to route shipment via the cheapest reasonable route known to him of the class designated by the shipper—that is, all-rail or rail-and-water—and via which he has rates which he can lawfully use. If a foreign car is available which under rules as to car service must be sent via a particular line or route over which a higher rate obtains, agent must explain to shipper that fact and allow shipper to elect whether he will use that car at the higher rate or wait for another car. If shipper elects to use the car at the higher rate, agent should so note on bill of lading. If agent is in doubt, he should secure information from proper officers of traffic department. It is important that agents at initial points be able to, and that they do, quote correct rates and give correct routings.

Refund of Overcharge Caused by Misrouting Through Error of Carrier's Agent

If a carrier's agent misroutes a shipment and thus causes extra expense to the shipper over and above the lawful charges via another

available route of the class designated by shipper—that is, all-rail or rail-and-water—over which such agent had applicable rates which he could lawfully use, and responsibility for agent's error is admitted by the carrier, such carrier may, as to shipments moving subsequent to March 18, 1907, adjust the overcharge so caused by refunding to shipper the difference between the lawful charges via the route over which shipment moves and what would have been the lawful charges on same shipment at the same time via the cheaper available route of the class designated which could have been lawfully used. Such refund must in no case exceed the actual difference between the lawful charges via the different routes as specified, and must in every instance be paid in full by the carrier whose agent caused such overcharge and must not be shared in by or divided with any other carrier, corporation, firm, or person. This authority is limited strictly to the cases specified, and to the circumstances recited and does not extend or apply to instances in which soliciting or commercial agents of carriers induce shippers to route shipments over a particular line via which a higher rate obtains than is effective via some other line.

Rule Limited to Bona Fide Cases of Error or Oversight

The rule is intended to apply to cases in which the agents who bill or actually forward or divert shipments through error or oversight send shipments via routes that are more expensive than those directed by shippers or available in the absence of routing instructions by shippers. It must not be used in any case or in any way to "meet" or "protect" a rate via another route or gateway via which the adjusting carrier has not in its tariffs at the time the shipment moves rates which are available and lawfully applicable thereto, nor as a means or device by which to evade tariff rates or to meet the rate of a competing line or route, nor to relieve shipper from responsibility for his own routing instructions.

Carrier Admitting Responsibility for Misrouting May Adjust With Delivering Carrier if Shipment Has Not Been Delivered or if it Has Been Delivered Undercharged

(Issued November 15, 1907.) The prerequisites to any refund under this rule are admission by carrier of responsibility for its agent's error in misrouting the shipment, and such carrier's willingness to bear the extra expense so caused, without recourse upon any other carrier for any part thereof. If, therefore, the error is discovered before the shipment has been delivered to consignee or before charges demanded upon same have been paid, the carrier acknowledging responsibility for the error may authorize the delivering carrier to deliver shipment upon payment of the charges that would have applied but for the misrouting and to bill upon it for the extra charge; or, if the shipment has been delivered undercharged before the error is discovered, the carrier that acknowledges responsibility for the error may pay the undercharge to the carrier that delivered the

shipment instead of requiring it to collect the undercharge from shipper, to be refunded to shipper.

Distinct From Cases Under Rule 74

Complete distinction must be observed between cases to which this rule applies and those provided for under Rule 74.

Co-operation by and Responsibility of Shippers and Consignees

Shippers must bear in mind that there is a limit beyond which an agent of a carrier could not reasonably be expected to know as to terminal delivery or local rates at distant points and on lines of distant roads to or with which he has no specific joint through rates. Consignors and consignees should co-operate with agents of carriers in avoiding misunderstandings and errors in routing and must expect to bear some responsibility in connection therewith.

Maximum Rates and Fares Not Specific Rates and Fares

71. (Issued March 18, 1907.) Rule 4 and Rule 34 prohibit including in a tariff any rule or regulation which in any way or in any terms authorizes substituting for any rate or fare named in the tariff a rate or fare found in any other tariff or made up on any combination or plan other than that clearly stated in specific terms in the tariff of which the rule or regulation is a part. These rules are intended to bring about entire discontinuance of tariff rules which provide that rates or fares named in tariff will apply to certain points "as maxima," or that if a combination on some gateway or basing point makes less than the rates or fares named in tariff such combination will apply, or for equalizing or protecting any rate or fare via another line or route or gateway, etc. The intent is that as rapidly as tariffs can be reconstructed in accordance with the regulations issued by the Commission they will state in specific, clear, and unambiguous terms the rates and fares and their application.

Combinations of Lawfully Published Bases of Rates or Fares Instead of Maximum Rates or Fares

The Commission decides that, pending the complete elimination of such rules, a rate or fare that is stated in a tariff as applicable to a certain point as a maximum is not a specific through rate or fare to that point, and that a rate or fare made up under Rule 5 or Rule 36 may be used in preference to such maximum rate or fare if there is no applicable rate or fare via the route over which shipment or passenger moves, other than the one made by such maximum rule. In every instance where there is a *specific* joint through rate or fare from point of origin to point of destination it must be applied to through shipments or passengers regardless of possible lower combinations. (See Rules 5, 36, and 55.)

Combination of Joint Rate or Fare to Common Points and Local Rate or Fare Beyond

72. (Issued March 18, 1907.) In order to secure uniformity in practice and understandings and to remove the cause of many complaints, the Commission decides that when a joint through rate or fare is the same to two or more points and rate or fare on through shipment or passenger to local stations to which no specific joint through rate or fare applies is made up by combination of such joint through rate or fare to common points and local rate or fare beyond, the rate or fare for through shipment or passenger must be determined by calculating the joint through rate or fare to the point from which the lower local rate or fare applies to point of destination and adding thereto such local rate or fare. For example: Joint through tariff names the same rates or fares from certain eastern points to Chicago and Milwaukee. If shipment or passenger is destined to a point to which the local rate or fare is less from Milwaukee than from Chicago, the rate or fare applied should be the joint through rate or fare to Milwaukee plus the local rate or fare from Milwaukee to destination, and unless the lines of delivering carrier reach both Chicago and Milwaukee the shipment or passenger should move via Milwaukee. If the local rate or fare from Chicago to point of destination is lower than from Milwaukee, the rate or fare should be the joint through rate or fare to Chicago plus the local rate or fare from Chicago to destination, and unless the lines of delivering carrier reach both Milwaukee and Chicago the shipment or passenger should move via Chicago.

Rates or fares for outbound through movements from such local stations and under like circumstances must be applied on the same basis where the joint through rates or fares are the same from two or more points.

Rates and Fares Must be Those in Effect Over Routes by Which Shipment or Passenger Moves

This does not authorize any carrier to apply to transportation over its lines any rate or fare except those stated in its own lawfully published tariffs or in the lawfully published joint tariffs in which it has concurred. If a carrier desires to "meet the rate" of a competitor, it must do so by lawfully including in its own tariffs such specific rates or fares, proportional or otherwise, as may be necessary so to do.

Assistance by Shippers

It is suggested that shippers can assist in avoiding mistakes and misunderstandings by calling attention to the rate that should apply in such cases as come under this rule by indicating it on shipping bill in connection with routing instructions; for instance, "Rate on Milwaukee." This is, however, merely a suggestion, and does not

relieve the agents of carriers from the responsibility of quoting and applying the correct lawful rate.

Rule Applies to Reconsignments Only When Provided for in Tariff

This rule does not apply in case where shipment has reached its destination as originally given by shipper and has been reconsigned, except when tariff contains reconsigning rule that provides for such application.

Rule Does Not Apply Where Joint Through Rate or Fare to Destination is in Effect

This rule must not apply in any case where there is an applicable specific joint through rate or fare from point of origin to point of destination. (See Rule 55.)

Carrier May Not be Given Preferential Rates

73. (Issued May 6, 1907.) In answer to inquiries the Commission expresses the opinion that under the law a carrier, or a person or corporation operating a railroad or other transportation line, cannot, as a shipper over the lines of another carrier, be given any preference in the application of tariff rates on interstate shipments, but it may lawfully and properly take advantage of legal tariff joint rates applying to a convenient junction or other point on its own line, provided such shipments are consigned through to such point from point of origin and are, in good faith, sent to such billed destination. In other words, one carrier shipping its fuel, material, or other supplies over the lines of another carrier must pay the legal tariff rates applicable to the same commodities shipped by an individual. There may be some instances, such as the movement of needed fuel, in which, in order to keep the trains or boats moving, such traffic could temporarily be given preference in movement without creating unjust or unwarranted discrimination.

Where stock in one carrier company is owned by another carrier company, but both maintain separate organizations and report separately to the Commission, they may not lawfully carry property free for each other.

Return of Astray Shipments

74. (Issued May 6, 1907.) Instances occur in which, through error or oversight on the part of some agent or employee, a shipment is billed to an erroneous destination or is unloaded short of destination or is carried by. The Commission is of the opinion that in bona fide instances of this kind carriers may return such astray shipments to their proper destination or course without the assessment of additional charges, and may arrange for such movement of such astray shipments for each other on mutually acceptable terms without the necessity of publishing, posting, and filing tariff under which it will be done.

Complete distinction must be observed between cases to which this rule applies and those provided for under Rule 70.

Transportation of Federal Troops

75. (Issued May 27, 1907.) The Commission is of the opinion that carriers, either by contract or bid or other arrangement with the War Department, may lawfully make special rates or fares for the movement of Federal troops, when moved under orders and at the expense of the United States Government, and that the rates or fares so made need not be posted or filed with the Commission.

Published Rates and Fares are Maximum for Moving Federal Troops

The lawfully published rates or fares for the transportation of the general public, in the opinion of the Commission, are to be regarded, however, as the maximum rates and fares that may lawfully be charged the Government for the movement of Federal troops.

This ruling also governs similar transportation for the naval and marine services.

Classification of High Explosives

76. (Issued May 29, 1907.) Some freight classifications provide that high explosives will be "taken only by special agreement." Carriers are prohibited from carrying any traffic except under tariffs provided in the manner prescribed by law. It follows, therefore, that no traffic or transportation can be the subject of special agreement between carrier and shipper except as provided in Rule 75 and in Section 22 of the Act. If it is impracticable to classify high explosives in the classification the statement must not be, "taken only by special agreement," but must be, "subject to regulations and rates in tariffs of the individual carriers;" and each carrier must provide in its tariffs the rates and regulations applicable to such traffic.

Minimum Carloads

77. Where a rate for carload shipment is relatively lower than less-than-carload rate the reasonableness of a minimum carload weight to which carload rate will apply is recognized, as is also the desirability of highest efficiency both in the movement and the loading of cars.

Carriers provide cars of varying dimensions and capacities, and they provide minimum weights for the several kinds of cars based upon those dimensions and capacities. At times when transportation facilities are inadequate to supply the demand upon them it is frequently difficult or impossible for the carrier to furnish a shipper with a car of the dimensions or capacity desired by him, although the carrier has in its tariffs provisions for the use of such car. Mani-

festly it is not equitable or proper to require the would-be shipper to pay additional transportation charges for the privilege of using a car of different dimensions or capacity from that which would suit his shipment or forego entirely his desire to ship.

Some carriers provide elastic rules which properly permit the use of cars of different dimensions or capacities when they are furnished by the carrier in lieu of those desired or ordered by the shipper. Other carriers do not so provide, and as a result many instances arise in which the initial carrier under such provision furnishes the shipper with cars at its convenience and connecting carriers that have not adopted similar provisions assess higher charges in accordance with their tariffs, thus imposing upon the shipper a wholly unexpected, and, in the view of the Commission, unreasonable, charge.

The Commission believes it to be the duty of every carrier to incorporate in its tariff regulations a rule to the effect that when carrier cannot promptly furnish car of capacity or dimensions desired by the shipper, and for its own convenience does provide a car of greater capacity or dimensions than that ordered, such car may be used on the basis of the minimum carload fixed in the tariffs for cars of the dimensions or capacity ordered by the shipper; and that if a car of smaller capacity than that ordered by the shipper is furnished, it may be used on the basis of actual weight when loaded to its full visible capacity, or that that portion of the shipment which cannot be loaded into the smaller car will be taken in another car and the shipment treated as a whole on the basis of the minimum fixed for the car ordered by the shipper; and that if the carrier is unable to furnish a car of large dimensions, ordered by shipper, it may furnish two smaller cars which may be used on the basis of the minimum fixed for the car ordered; it being understood that shipper may not order a car of dimensions or capacity not provided for in the carrier's tariffs.

In all such cases the capacity of the car ordered, the date of such order, the number, initials, and capacity of the car furnished should be stated on the bill of lading and the carrier's waybill.

In case of controversy between shippers and carriers caused by absence of such rule from tariffs which provide graduated minima for cars of different sizes the Commission will regard such tariffs as *prima facie* unfair and unreasonable.

It is the duty of carriers to provide reasonable facilities for transportation, and if they cannot furnish equipment to move the carloads provided for in their regulations it is clearly their duty to provide some other method of transporting as one shipment, and at the rate named therefor, such carload weight when tendered by shipper.

Movement of Shipments Refused by Consignees or Damaged in Transit

78. (Issued June 3, 1907.) In one form or another many carriers provide for the return free or at reduced rates, or the reconsignment under through rate from point of origin, of shipments that

are damaged in transit or are refused by consignees. In answer to request for ruling the Commission expresses the opinion that in a nondiscriminatory way and within reasonable limits such rule is not unlawful or improper. Care should be taken to preserve the distinction between shipments in which the carrier has no interest except the collection of the transportation charges and which are reconsigned or returned purely out of consideration for the interests of the owner of the shipment and shipments which, because of injury or damage in transit, are left on the carrier's hands and in which it has an interest to the extent of the transportation charges and the value of the shipment.

Shipments Refused by Consignee

A rule providing that shipments which are refused by consignee may be reconsigned and forwarded, under application of through rate from point of origin to final destination, either with or without the exaction of a reconsignment charge, is permissible. Such rule should provide that if reconsigned to a point beyond which takes a lower rate from point of origin the rate to first destination will be charged, and should also require satisfactory showing of actual refusal by consignee and of a genuine transaction in good faith.

Shipments Damaged in Transit

A rule providing for the reconsignment or return free or at reduced rate of articles damaged in transit is not deemed improper if it is so framed and applied as to prevent abuse or improper practices under it. As to shipments that are not in closed packages, and thus are open to immediate inspection, the rule should provide that in order to claim return under this rule the goods shall not have left the possession of the carrier before such claim is made. As to goods that are in closed packages it is believed that the rule should provide that they must be returned to the carrier within ten days.

Rules Must be Published and Applied Only Via Route Over Which Shipment Moved

Such rules must be in tariffs and must be applied without discrimination and should provide that rule for return of shipments applies only via the route and line over which the shipment moved. Uniformity among carriers in rules and practices in such matters as these is desirable and contributes to thorough understandings and harmony between carriers and shippers.

Damaged in Transit Shipments Left on Hands of Carrier May be Hauled Over its Lines as its Own Property Would be

Where a shipment is refused and is left on the hands of the carrier it is believed that the carrier, when it recognizes its responsibility for the value of the shipment and the transportation charges on

same, may haul it for itself to such point on its own lines as offers the best opportunities or facilities for disposing of it to advantage, just as it may haul property of its own.

Correspondence With Commission on Freight and Passenger Matters

79. (Issued November 16, 1906.) It is believed that the best results and understandings will be reached if the conducting of ordinary correspondence between carriers and the Commission is confined to as few persons as possible. Request is therefore made that the traffic manager or the general passenger and general freight agents of each road designate not more than two officials or other representatives to respectively conduct the correspondence with the Commission on freight and passenger matters, and to promptly advise the Commission of such appointments.

Distribution of Official Circulars and Rulings

80. (Issued November 16, 1906.) It is obviously impracticable for the Commission to place copies of its official circulars and rulings in the hands of all the officers of carriers or to furnish copies for distribution among them. The officers at the head of traffic departments, or in charge of the passenger and freight departments, respectively, will please designate for each road one official in the passenger department and one in the freight department (unless both are under one head officer and one appointment is considered sufficient), to whom such circulars and rulings are to be sent; and arrange for such designated officials to disseminate the information among other interested officers and agents. Please report these appointments to the Commission as early as possible.

Mailing List

With the view of giving prompt information to those who may be interested, the Commission will upon application place upon its mailing list regularly organized boards of trade, chambers of commerce, commercial clubs, and shippers' associations, for the purpose of mailing to them copies of official circulars containing rulings and orders of the Commission.

Special Reparation on Informal Complaints

81. (Issued June 7, 1907.) To assist in the settlement of certain claims of shippers against carriers, and as a practical means of disposing with promptness of informal complaints that might otherwise develop into formal complaints, and in connection with which the unreasonableness of the rate or regulation is admitted by the interested carrier or carriers, the Commission on full information will authorize adjustment by special order if all of the facts and conditions warrant such action. The connections in which the Commission has authority to modify the provisions of the law are

specified in the Act. The Commission will not assume to modify it in any other connections or features.

Must Present Plain Case

The instances in which the Commission will authorize refund or reparation on informal complaint and in an informal way will be confined to those in which the informal showing develops plainly a case in which the Commission would award reparation on formal hearing and in which an adjustment agreeable to complainant and carrier or carriers and in conformity with the provisions of the law is reached.

Must Admit Unreasonable Charge

Reparation involving refund of alleged overcharges in instances in which the lawful tariff rates have been applied will be authorized under informal proceedings, only when the carrier admits the unreasonableness of the rate charged and it is shown that within a reasonable time, not exceeding six months, after the shipment moved it has incorporated in its own tariffs, or in tariffs in which it has concurred, the rate upon basis of which adjustment is sought, and has thus made that rate lawfully applicable via the route over which shipment in question moved. Adjustment of a claim of this character that is filed with the Commission within six months after the shipment moved may, however, be authorized even if more than six months have elapsed between the movement of the shipment and the effective date of tariff rate or regulation that forms the basis of such adjustment. Authority for refund on account of a reduced rate or changed tariff regulation will also contain Commission's order requiring the maintenance of such rate or regulation for at least one year.

Carrier Must Have Authority

No carrier may pay any refund from its published tariff charges save with the specific authority of the Commission in accordance with the provisions of the Act. When an informal or formal reparation order has been made by the Commission the principle upon which it is based shall be extended to all like shipments, but no refunds shall be made upon such like shipments except upon specific authority from the Commission therefor.

Pay Charges Demanded by Carrier—Demurrage Charges Accruing Pending Dispute or Subsequent to Consignee's Refusal to Accept Shipment

The shipper should pay the lawfully published charges applicable via the route over which the shipment moves, and make claim for refund if he believes he has been overcharged. The Commission will not ordinarily include in reparation award demurrage charges which

accrue pending adjustment or subsequent to consignee's refusal to accept the shipment and pay the lawful charges thereon, but in special cases such demurrage charges may be included in the amount of refund.

It is the duty of the delivering carrier to collect, and of the consignee to pay, demurrage charges as per lawful tariffs. Demurrage charges accruing because of error of a carrier are considered in the same light as are other additional transportation charges caused by carrier's error; and if adjusted, the full expense thereof must be borne by the carrier whose agent is responsible for the error. (See Rule 70.)

Reparation Only on Basis of Rate That is in Tariff

The Commission has repeatedly announced the view that the law does not permit the use of any rate or fare except that contained in a lawful tariff that is applicable via the line, route, and gateway over and through which the shipment or passenger moves. The lawful rate or fare for through movement is the through rate or fare, wherever such through rate or fare exists, even though some combination makes a lower rate or fare and even though the practice in the past has been to give to some the benefit of such lower combination. The Commission long since extended to carriers, in a general order, permission to reduce, on one day's notice, a joint commodity or class rate or fare that is higher than the sum of the locals between the same points to make it equal the sum of such locals. If, therefore, carriers have maintained through rates or fares that are higher than the sums of the locals between the same points, it is because of their desire so to do, and not, as some agents of carriers have informed shippers, because the law or the Commission forces them to do so. (See Rule 56.)

If a carrier desires to give its patrons the benefit of the same rate or fare that applies via another line or gateway, and which is lower than its own rate or fare, it can do so by lawfully incorporating that rate or fare in its own tariffs, and so give the benefit of it to all of its patrons alike. The law forbids giving such lower rate or fare to one and withholding it from another, but neither the law nor the Commission stands in the way of adoption in lawful manner of the lower rate or fare as available for all.

The Commission's power to authorize adjustments will not be exercised in such way as to create the very discriminations which the law aims to prevent. No doubt instances will occur in which seeming hardship will come to some. Much of such embarrassment will be avoided if agents of carriers and shippers take pains to be certain that correct rates are quoted and correct routing is given.

Statute of Limitation

Claims filed since August 28, 1907, must have accrued within two years immediately prior to the date upon which they are filed; otherwise they are barred by the statute. Claims filed with the

Commission on or before August 28, 1907, are not affected by the two years limitation in the act. The Commission will not take jurisdiction of or recognize its jurisdiction over any claim for reparation or damages which is barred by the statute of limitation, as herein interpreted, and the Commission will not recognize the right of a carrier to waive the limitation provisions of the statute.

Refunds and Commissions

82. (Issued July 8, 1907.) The act prohibits a carrier from demanding, collecting, or receiving a greater or less or different compensation for transportation than that named in its tariffs in effect at the time. It prohibits the rebating or refunding to any person in any manner, or by any device whatsoever, any part of the lawful charges so collected. It is therefore manifestly unlawful for a carrier to refund to any association, committee, or person any part of the charges collected by the carrier as a condition of the sale of transportation. A carrier's agents may, as a matter of convenience, sell admission tickets to entertainments in connection with which excursion-fare tickets are sold, but the purchase of such admission ticket must not be made a condition of the sale of transportation ticket.

Entertainment Provided, or Contribution Made, by a Carrier

(Effective March 1, 1908.) The act does not prohibit a carrier from providing in its own interest and as a means of stimulating travel over its line an entertainment at a point on its line; nor from contributing to the expense of such an entertainment if such contribution be made in a definite sum and be in no way dependent or contingent upon the number of tickets sold, and provided that no part of such contribution be by any device or through any person whatsoever permitted to effect any departure from or discrimination under the carrier's tariff fares.

Responsibilities of Carriers Under Tariffs

83. (Issued November 15, 1907.) Prior to May 1, 1907, the date upon which the Commission's freight tariff rules became effective, no uniform or definite practice or rule was followed by carriers in regard to concurrence in joint tariffs. The plan most generally followed was for each carrier to file with the Commission a statement that it thereby concurred in any tariff, issued by any carrier, and in which it was shown as a participant, except when it gave to the Commission specific notice of nonconcurrence in particular issues. Some carriers, however, did not file such a declaration, but accepted traffic and settlements under joint tariffs in which they were shown as participants, although no concurrence therein had ever been given.

The general, if not universal, understanding and practice was that every carrier had a right to issue tariffs containing joint through rates or fares over the lines of other carriers named therein as partici-

pants, to note therein that the carriers named as participants would certify their concurrence to the Interstate Commerce Commission, and for all to use such tariffs except in cases where carriers specifically certified to the Commission their nonconcurrence in certain publications.

To now undertake to check out and follow down definite and actual concurrence of carriers in tariffs issued prior to May 1, 1907, would be a hopeless task; and to declare unlawful all tariffs, and participation therein, which were not so definitely and actually concurred in, other than by use thereof, would be to overthrow practically all such joint tariffs and leave transportation in chaos.

Some carriers have sought to evade liabilities under such joint tariffs on the plea that they never concurred therein, although in each instance so far brought to notice such carrier is shown to have accepted traffic and collected charges thereon in accordance with such tariff up to, and in some instances subsequent to, date of filing notice of nonconcurrence.

Such complications are impossible as to tariffs issued subsequent to May 1, 1907, if the Commission's tariff regulations are observed. The Commission cannot undertake to now excuse carriers from responsibilities placed upon them by tariffs that were issued prior to May 1, 1907, and in which they are named as participants in conformity with customs that were followed so generally and for so long a time as to render them binding upon those who did not give notice of nonconcurrence, except in accordance with and subsequent to filing of specific notices of nonconcurrence.

The Commission's tariff regulations require that the carrier or joint agent that issues a joint tariff shall, before issuing same, have secured the definite and affirmative concurrence of every carrier shown therein as a participant, and shall show in connection with the name of each participating carrier the form and number of the instrument by authority of which that carrier is made a party to the tariff.

Carrier Not Bound by Being Named as Participant in Tariff Without its Authority

A carrier has no means of preventing another carrier from naming it as party to a joint tariff without proper authority so to do. It cannot, however, be bound by such unauthorized act, and it is its obvious duty to refuse to recognize or apply any such unlawful issue. It should also at once call attention of the Commission and of the one that issued the tariff to such erroneous action.

If one or more carriers are, without proper authority, so shown as participating in any tariff and other carriers are lawfully shown as parties thereto, the use of the publication is unlawful as to the carriers that are named as parties thereto without proper authority and lawful as to those that are parties to it under proper authority. The carrier over whose line shipments or passengers are sent under a joint tariff is bound by the terms of that tariff if it has lawfully concurred therein, and, if it has not lawfully concurred therein, may

not accept earnings in accordance therewith, but must demand for the service performed its lawful earnings according to its lawful tariffs.

Responsibility for Unlawful Incorporation of a Carrier in a Tariff

Responsibility for the unlawful incorporation of any carrier in a tariff will rest upon the carrier that issued the tariff, or, if the tariff is issued by a joint agent and attorney for two or more carriers, will rest upon that one of his principals that accepts and forwards the business under that tariff.

Policy of Commission on Complaints

In passing upon a complaint of overcharge growing out of improper or unlawful inclusion of any carrier's name in the list of participating carriers in the tariff under which the business was accepted and forwarded the Commission will apply the principles above stated.

Extensions of Time on Limited Tickets

84. (Issued November 15, 1907.) Carriers may provide in their tariffs that limited passenger tickets may be extended in case of the illness of the passenger holding such ticket. Tariffs must give the title of the officer who shall have authority to give such extension, and such officer shall be required by the carrier to keep a memorandum of each instance in which such extension is given, and the date upon which it is allowed. Such information shall be subject at any time to be called for by the Commission. This rule must be applied strictly and in good faith, and upon the carrier is placed the responsibility of strict conformity thereto. Only such illness as makes travel dangerous to the health of the traveler will justify the extension herein provided for. The extension may also be granted to one or more members of the family of the passenger who is ill when traveling together, and to persons who are subject to an established quarantine. Stop-over privileges for a limited time may be granted for the same causes and under the same conditions and restrictions as justify extension of time on limited tickets. No extension of time upon limited tickets or stop-over privileges will be recognized as valid unless provision therefor is made in the carrier's published tariffs.

Withdrawal of Filed Tariffs Not Permitted

85. Not infrequently the Commission is requested to return to carriers tariff publications which have been received and filed by the Commission in the ordinary course of business. Such requests are usually based on the desire to substitute some corrected or changed publication for the one that has been filed. Manifestly it would be improper for the Commission to permit such substitutions

or to surrender any tariff publication duly and properly received and filed by it, unless such surrender is caused by rejection of such publication by the Commission because of illegality or irregularity in connection therewith. To surrender publications duly filed and permit the substitution of others would involve a species of falsification of the records which could not be permitted.

Ocean Carriers—When Not Subject to the Act

86. Ocean carriers between ports of the United States and foreign countries *not adjacent* are not subject to the terms of the act to regulate commerce; nor to the jurisdiction of the Commission.

Export and Import Tariffs

The inland carriers of traffic exported to or imported from a foreign country not adjacent, must publish their rates and fares to the ports and from the ports, and such rates or fares must be the same for all regardless of what ocean carrier may be designated by the shipper or passenger.

Through Rates or Fares May be Shown

As a matter of convenience to the public they may publish in their tariffs such through export or import rates or fares to or from foreign points as they may make in connection with ocean carriers. Such tariffs must, however, distinctly state the inland rate or fare as above provided; and need not be concurred in by the ocean carrier, because, concurrence can be required from, and is effective against, only carriers subject to the act.

Must be Filed and Posted

Whichever plan of publishing these rates and fares is followed the tariffs must be filed and posted, and may be changed only upon statutory notice or under special permission for shorter time.

Through Export and Import Billing

Export and import traffic may be forwarded under through billing but such through billing must clearly separate the liability of the inland carrier or carriers and of the ocean carrier, and must show the tariff rate of the inland carrier or carriers.

Rule Modified. The Commission on June 8, 1908, upon the petition of the Atchison, Topeka & Santa Fé Railway, gave permission to carriers to make changes in said rates upon notice to the Commission and the public of three days as to changes which effect reductions in rates or charges, and like notice of ten days as to charges

which affect increases in rates or charges. Carriers are granted until October 1, 1908, to file and post tariffs as required by law in conformity to requirements of Rule 86.

Special Circular No. 6
(Tariff Department.)

January 7, 1908

Use of Tariffs Containing Long-and-short-haul Clauses, Maxima Rules, and Alternative Rate or Fare Provisions

The underlying principle of the Commission's tariff regulations is that the statement of rates and fares and their application shall be affirmative and definite; and the incorporation of tariff rules which make the application of the rates or fares uncertain is prohibited, as is also any method of stating rates or fares which is ambiguous.

Many tariffs that were on file before May 1, 1907, contain long-and-short-haul clauses, maxima rules, alternative rate or fare provisions, or other rules which make the application of the rates or fares uncertain, more particularly as to intermediate stations not specified in the tariff; and some such rules have, through misunderstanding, been included in tariffs that have been issued since May 1, 1907. Some carriers whose tariffs do not contain rules of the character in question have followed the practice of applying tariff rates or fares as maxima at intermediate stations except when tariffs specifically provide to the contrary.

The Commission desires and requires that at the earliest practicable date all such features and practices as are above referred to shall be eliminated from tariffs and discontinued either by supplement or by reissue of tariff. It does not underestimate the volume of work in checking of rates and fares and preparation of tariffs that is involved; it appreciates the efforts and the progress that have been made thus far; and, as an aid in simplification and directness in providing and applying lawful tariff charges, and to avoid hardship to shippers or passengers at intermediate stations which would otherwise be left without rates or fares which they have heretofore enjoyed, and with the understanding that this work will be earnestly pursued with the purpose of completing by it the date named, the Commission decides that until July 1, 1908, carriers may continue the use and present application of tariffs which were issued prior to January 15, 1908, and which contain rules of the character hereinbefore referred to, or under which, without specific provision in the tariff therefor, the rates or fares have been applied at intermediate stations, and excepting those tariffs which, before July 1, are corrected by supplements or replaced by new issues. Tariffs issued subsequent to January 15, 1908, must not contain any such rules as are herein considered nor be applied in any manner not affirmatively provided therein.

Each carrier that has tariffs containing any of the rules referred to, or which without containing such rules are applied at stations not

specified therein will, on or before February 1, file with the Commission a statement showing by I. C. C. numbers all of the tariffs of its issue which contain such rules or which are so applied. This list shall contain both local and joint tariffs that are issued by the carrier making the list; and similar lists of their issues will be furnished on the same dates by joint agents who issue tariffs for carriers. Revisions of these lists will be furnished to the Commission on the 1st of April and on the 1st of June, from which will be omitted such tariffs as have been corrected or reissued.

These statements, when checked against the Commission's tariff file, will indicate the progress that is being made in this work, and unless satisfactory headway is shown the Commission may order the immediate reissue or cancellation of tariffs in question.

Paragraph (d) of Rule 4, and paragraph (c) of Rule 25, Tariff Circular 14a, provide that a tariff shall contain complete alphabetical indexes of the stations from and to which it applies. This is not to be understood as prohibiting the incorporation in a tariff of a rule providing for the affirmative and definite application of the rates or fares named in that tariff to stations not indexed and which are directly intermediate on the same line with stations that are indexed.

The permission for issuance on less than statutory notice of tariff supplements for the purpose of eliminating rules of the character referred to and of making the tariff rates or fares definitely and affirmatively applicable, as given in Commission's Special Circular No. 3, Tariff Department, of October 9, 1907, and extended in Special Circular No. 5, Tariff Department, of November 15, 1907, and in further extension notice of December 21, 1907, is hereby revoked, effective January 15, 1908.

SUPPLEMENT NO. 1 TO TARIFF CIRCULAR 15-A

Issued by Order of The Commission—Effective as Noted in Individual Items

Demurrage on Interstate Shipment

(Adopted May 12, 1908.) The act requires that carriers shall publish, post, and file "all terminal charges . . . which in any wise change, affect, or determine . . . the value of the service rendered to the passenger, shipper, or consignee," and all such charges become a part of the "rates, fares, and charges" which the carriers are required to demand, collect, and retain. Such terminal charges include demurrage charges.

On March 16, 1908, the Commission decided that demurrage rules and charges applicable to interstate shipments are governed by the act to regulate commerce, and therefore are within its jurisdiction and not within the jurisdiction of state authorities. Any other view would open a wide door for the use of such rules and charges to effect the discriminations which the act prohibits.

Demurrage rules and charges must be observed as strictly as transportation rules and charges. The Commission cannot, therefore, recognize as lawful any rule governing demurrage the application of which is dependent upon the judgment or discretion of some person, or which provides for exemption therefrom in certain exigencies in the creation of which the carrier has no part. Interstate tariffs containing such rules must be corrected or canceled.

Loading of New Cars

(Adopted May 12, 1908.) The minimum weight upon which carload rate is based is a part of the rate, because the charges on the shipment are determined by such minimum weight. The publication, posting, and filing of the rate and of the minimum weight are therefore equally necessary, and it is also equally necessary that both be observed.

Carriers' mechanical departments have rules against loading to its full capacity a new car on its first trip. This rule is understood to generally provide that such car shall not on its first trip be loaded to more than 75 per cent of its capacity. The Commission is requested to pass upon the question of conflict between the tariff minimum and the mechanical department's rule.

All new cars are now of much greater capacity than those of a few years ago, and carload minima have also been increased. The number of commodities that are shipped in closed cars and that ordinarily are loaded to the full capacity of the car are comparatively few.

Except in times of actual car shortage there would seem to be but little difficulty in selecting for such new cars loading that would bring no conflict between the tariff and the mechanical department's rule. The tariff rule is the one which the carrier is by law obligated to observe and maintain. It is not possible to authorize setting aside the tariff requirement without creating or making possible discriminations. There is no objection to incorporating in the tariff a rule that the minimum weight applicable to a new car on its first loading shall be a certain percentage of its capacity or of the minimum fixed in the tariff. We adhere to the view that the rule governing minimum weight shall be contained in a lawful tariff and that it must be applied and observed.

Transportation of Trucks of Cars Destroyed on Foreign Lines

(Adopted May 12, 1908.) If a car of one company is destroyed on the line of another company and the lines of those two companies directly connect with each other, the carrier upon whose lines the car is destroyed may transport free, as its own property, to junction with the line of the carrier owning the car the trucks of the destroyed car, which are understood to be salvage from a wreck, the cost of which must be borne by the carrier on whose lines it occurs. If there is not direct connection between the line of the carrier owning the car and the line upon which it is destroyed the carrier on whose line the car is destroyed may transport the trucks free to a junction with an intermediate carrier, and pay to the intermediate carrier or carriers their full tariff rates for transporting them to a junction with the line of the carrier owner of the car destroyed, and such owner may transport them on its own lines as its own property.

It does not appear to the Commission that opportunity for abuse or discrimination is opened by this practice. It does not appear to transgress the Commission's rule that carriers may not haul freight free for each other; and it is approved with the reservation that if discrimination or unlawful practice is found to grow out of it the plan will be condemned.

Demurrage on Privately Owned Cars

On April 13, 1908, the Commission decided in case No. 933, "In the Matter of Demurrage Charges on Privately Owned Tank Cars," that private cars owned by shippers and hired to carriers upon a mileage basis are subject to demurrage when said cars stand upon the tracks of the carrier either at point of origin or destination of shipment, but are not so subject when upon either the private track of the owner of the car or the private track of the consignee. The carrier must charge demurrage in all cases where such demurrage is imposed by tariff provision upon its own equipment, except when a privately owned car is upon a privately owned siding or track and the carrier is paying or is responsible for no rental or other charge upon such car.

On June 2, 1908, the Commission supplemented this as follows:

A private sidetrack is one which is not owned by the railroad, is outside the carrier's right of way, yards, or terminals, and to which the railroad has no right of use superior to the right of the shipper. This definition is based, as we think it should be based, upon consideration of the carrier's right to the use of the track rather than the ownership of the land or rails.

A private car is a car owned and used by an individual, firm, or corporation for the transportation of the commodities which they produce or in which they deal. It will include also cars owned and leased to shippers by private corporations.

The rule as to demurrage charges on private tank cars is applicable to all other private cars used by the railroads and paid for on a mileage basis.

It is not the intention of the Commission that this ruling shall be given a retroactive effect. The demurrage question has been in a state of great confusion, and the desire of the Commission is to establish a uniform, fair, and practicable system for the future. Claims for refund of demurrage charges previously collected in accordance with regular tariff rules will not be regarded with favor.

Substituting Tonnage at Transit Point

(Adopted June 25, 1908.) A milling, storage, or cleaning-in-transit privilege is established on the theory that the commodity may be stopped en route for the enjoyment of such privilege, and the commodity or its products be forwarded under the application of the through rate from original point of shipment. It is not expected that the identity of each carload of grain, lumber, salt, etc., can or will be preserved, but in the opinion of the Commission, it is unlawful to substitute at the transit point, or forward under the transit rate, tonnage or commodity that does not move into that point on that same rate, and tariffs which contain any provisions which authorize in terms or by interpretation any such practice must be at once corrected.

Amendment to Rule 7, Tariff Circular 15-A

(Adopted June 9, 1908.) The following is added to Rule 7, Tariff Circular 15-A: Classifications and class rate tariffs that are issued or supplemented hereafter shall each contain a rule providing that wherever a commodity rate is established it removes the application of the class rates between the same points on that commodity.

If the alternative use of class or commodity rates is necessary or desired in any instance it may be provided by including in different sections of one and the same tariff the class and commodity rates, and by including in each section the specific rule "If the rates in section — of this tariff make a lower charge on any shipment than the rates in section — of this tariff, the rates in section — will be applied." No rates may be so included in a tariff for alternative use excepting such as the carrier or agent who issues the tariff is lawfully authorized to publish and change; that is, rates issued

by another carrier or agency may not be reproduced for such alternative use.

Amendment to Rule 8, Tariff Circular 15-A

(Adopted June 27, 1908.) The third paragraph of Rule 8 is amended so that it will read: If a tariff is canceled with the purpose of canceling entirely the rates named therein, or when, through error or omission, a later issue failed to cancel the previous issue and a tariff is canceled for the purpose of perfecting the records, the cancellation notice must not be given a new I. C. C. number, but must be issued as a supplement to the tariff which it cancels, even though it be a tariff of less than 5 pages, and even though such tariff may at the time have two effective supplements.

When a tariff or a commodity rate is canceled by supplement, the cancellation notice must show where rates or rate will thereafter be found or what rates or rate will thereafter apply. For example: "Rate in —, I. C. C. No. —, will apply," or "Class rates will apply," or "Combination rate will apply," or "No rates in effect."

Amendment to Rules 9 and 38, Tariff Circular 15-A

(Adopted July 1, 1908.) Rules 9 and 38 of Tariff Circular 15-A are amended by adding thereto the following: When a road or a part of a road is transferred from the operating control of one company to that of another, or when its name is changed, the existing tariffs issued by the company that surrenders control must be withdrawn by it and adopted by the company assuming control, as provided in the preceding paragraph.

As to tariffs issued by other carriers or joint agents under concurrences or powers of attorney granted by the old carrier or company, the new carrier or company shall, if it intends to use such tariff publications and rates, issue, file, and post, with I. C. C. number, an adoption notice, substantially as follows:

The [name of carrier] hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs, rules, notices, concurrences, traffic agreements, divisions, authorities, powers of attorney, or other instruments whatsoever, filed with the Interstate Commerce Commission by the [name of old carrier] prior to [date] the beginning of its possession. By this tariff it also adopts and ratifies all supplements or amendments to any of the above tariffs, etc., which it has heretofore filed with said Commission.

Similar adoption notice must be filed by a receiver when assuming possession and control of a carrier's lines.

This notice may be made effective and be filed on immediate notice.

Concurrences and powers of attorney so adopted must, as soon as possible, be replaced and superseded by new concurrences and powers of attorney issued by and in the name of the new carrier or company, and in each instance canceling the concurrence or power of attorney superseded.

The carrier surrendering control of the property has no lawful right to abandon its tariffs except on lawful notice, and when it surrenders control of the property it surrenders all right to publish rates or fares applicable thereto except under proper authority from the carrier or company to whose control the property passes. It must be that the shipping public has some rights to available and lawfully applicable rates and fares over that property.

Amendment to Rule 11, Tariff Circular 15-A

(Adopted June 27, 1908.) Rule 11, Tariff Circular 15-A, is amended by adding thereto the following: Each index must bear on its title-page the notation "This index contains lists of tariff publications in effect on [date of issue of index]."

Each supplement to index must bear on title-page the notation "This supplement contains corrections to and as in effect on [date of issue of the supplement]."

The title-page of index or of supplement must show the date of issue thereof, which must correspond to date shown in notations above and must not bear any effective date. The rule requiring thirty days' notice does not apply to these indexes and their supplements.

Amendment to Rule 37, Tariff Circular 15-A

(Adopted June 27, 1908.) Rule 37, Tariff Circular 15-A, is amended by adding thereto the following: If a tariff is canceled with the purpose of canceling entirely the fares named therein, or when, through error or omission, a later issue failed to cancel the previous issue and a tariff is canceled for the purpose of perfecting the records, the cancellation notice must not be given a new I. C. C. number, but must be issued as a supplement to the tariff which it cancels even though such tariff may at the time have a supplement in effect.

Amendment to Rule 38, Tariff Circular 15-A

(Adopted June 27, 1908.) Rule 38, Tariff Circular 15-A, is amended by inserting as the fourth paragraph thereof the following: A tariff or a supplement which contains reissued items must not bear the notation "Effective at once, except as noted," but instead must bear the notation "Effective —, except as noted in individual items." Example: "Issued —. Effective —, except as noted in individual items." Reissued items must bear notation "Effective [date upon which item became effective] in I. C. C. No. —;" or "in Supplement No. —, to I. C. C. No. —."

Items reissued from publications that were on file prior to June 1, 1907, may show last date and reference prior to June 1, 1907.

Amendment to Rule 39, Tariff Circular 15-A

(Adopted May 5, 1908.) Rule 39, Tariff Circular 15-A, applying only to passenger fare schedules, is amended by striking out from lines 3 and 4 of the rule the words "or a terminal."

On June 27, 1908, Rule 39, Tariff Circular 15-A, was further amended by adding thereto the following: Each index must bear on its title-page the notation "This index contains lists of tariff publications in effect on [date of issue of the index]."

Each supplement to index must bear on title-page the notation "This supplement contains corrections to and as in effect on [date of issue of the supplement]."

The title-page of index or of supplement must show the date of issue thereof, which must correspond to date shown in notations above, and must not bear any effective date. The rule requiring thirty days' notice does not apply to these indexes and their supplements.

Amendment to Rule 82, Tariff Circular 15-A

(Adopted May 12, 1908.) The opinion expressed by the Commission in Rule 82, Tariff Circular 15-A, is in strict accord with the terms and purposes of the act. The principle therein announced is adhered to. It appears, however, that within certain limits, and under proper restrictions, carriers should be permitted to avail themselves of opportunities heretofore employed of securing desired picnic excursion business, and that many church, school, and fraternal societies will thereby be assisted in legitimate and nondiscriminatory ways. The following is therefore added to Rule 82, Tariff Circular 15-A:

"A carrier may, actually and in good faith, employ a person to act for it in working up passenger excursions, and make his compensation depend upon the results from his efforts, by executing contract in the following form and filing copy of same with the Commission:

"The Rail.... Company, having arranged to run an excursion from to and return, on, to be known as the excursion, at the following fares: Adults,; children,, hereby engages the services of residing at, to solicit and develop business for said excursion. The said hereby agrees to devote to this work such portion of his time from to as may be necessary, in consideration of which the Rail.... Company agrees to compensate him as follows: If adult tickets, or their equivalent, are sold, cents for each adult and cents for each half ticket so sold.

"It is understood and agreed that no compensation will be paid hereunder if less than adult tickets, or their equivalent, are sold.

"It is understood and agreed that no part of the compensation paid by the Rail.... Company to the said shall be used, either directly or indirectly, to reduce the lawful published fares announced by the said Rail.... Company, or to in any other manner violate the terms of the act to regulate commerce or any other Federal or State law regulating common carriers."

Redeeming Unused Portions of Passenger Tickets

(Adopted May 12, 1908.) The unused portion of a passenger ticket, when presented by the original holder thereof to the carrier that issued it, may lawfully be redeemed by the carrier on the basis of the difference between the value of the transportation furnished by the carrier or carriers on that ticket, measured by the full tariff rates, and the amount originally paid for the ticket.

Validation of Round-trip passenger Tickets

(Adopted May 12, 1908.) The condition that a round-trip passenger fare ticket shall be validated for the original purchaser by carrier's agent at a given point is one of the conditions which affects the value of the service rendered to the passenger, and is one of the conditions that must be observed the same as the rate under which the ticket is sold, and must therefore be stated in the tariff under which it is sold. The tariff may provide for validation at numerous points, and it may provide for validation at any point intermediate to the original destination named in the ticket.

The conditions stated upon the ticket should not conflict with the tariff provisions, but if in any case there should inadvertently be conflict between the tariff provisions and the conditions stated on the ticket the tariff rule must govern.

CHAPTER XIV

BULLETIN No. 1

Conference Rulings of the Interstate Commerce Commission

Issued May 7, 1908

These rulings have been made by the Commission in conference, on the dates indicated, upon questions raised or submitted in correspondence. They have not heretofore been officially published by the Commission. Some of such decisions have been incorporated in Commission's revised tariff regulations and administrative rulings. Succeeding bulletins will be issued as circumstances may require or justify.

Passes to Caretakers

1. *November 4, 1907.* An employee of a produce company was granted a pass for the purpose of going to a point on the carrier's lines and returning as caretaker of a carload of bananas. He was not able to secure a return shipment. *Held,* That the carrier must collect the full fare. (See No. 37.)

Tariffs Distinguishing Between Shipments Handled by Steam and Electrical Power

2. Amendment to tariff provided:

"The above rates will apply only on shipments handled by steam power and will not apply when handled by electrical power."

Held, That the limitation of the rates to shipments handled by steam power is unlawful and must be eliminated from the tariff.

Collection of Undercharges

3. The Commission adheres to its previous ruling that carriers must exhaust their legal remedies to collect undercharges from consignees.

Rates on New Lines

4. *November 11, 1907.* Rule 44 of Tariff Circular No. 14-A, providing that rates may be established in the first instance on "new

lines" without notice, was intended to apply to *newly constructed lines* only. (See Rule 57, Tariff Circular 15-A.)

Free Storage Creating Distributing Point for Private Industry

5. Its attention being called to a tariff which, in effect, created a distributing point for a special industry by granting it free storage at that point, either in its own or the carrier's warehouses, and practically without limit as to time, the merchandise when shipped out to go on balance of through rate, the Commission expressed its disapproval.

Reconsignment Rule Will not be Given Retroactive Effect

6. A shipment consigned to one point was reconsigned en route to another, the tariff containing no reconsignment privilege. As a consequence local rates to and from the reconsigning point were applied and made higher than the through rate. *Held*, Under subsequent tariff that did not reduce rates, but incorporated a reconsignment privilege, that the benefit of such privilege could not be applied retroactively to a previous shipment, and cannot be accepted as the basis for a refund on special reparation docket.

Commissions on Import Traffic

7. *November 18, 1907.* The granting by carriers of commissions to persons acting as consignees on import traffic is a practice that cannot be sanctioned.

Demurrage Charges Resulting From Strikes

8. The Commission has no power to relieve carriers from the obligations of tariffs providing for demurrage charges, on the ground that such charges have been occasioned by a strike.

Free Transportation by Carriers for One Another

9. Where stock in one railway company is owned by another railway company, but both maintain separate organizations and report separately to the Commission, they may not lawfully carry freight free for each other.

Statutes of Limitations

10. *December 2, 1907.* Claims filed with the Commission since August 28, 1907, must have accrued within two years prior to the date when they are filed, otherwise they are barred by the statute. Claims filed on or before August 28, 1907, are not affected by the two years' limitation in the act.

Reduction of Rate When Formal Complaint Against it is Pending

11. When after complaint made and before hearing a rate is reduced to the sum demanded by the complainant, the order disposing of the proceeding shall require the maintenance of that rate as a maximum for not less than two years.

Tariff That Fails to State the Date of its Effectiveness is Unlawful

12. A tariff was filed without naming a date on which it was to take effect. Does it ever become effective, and if so, when? *Held*, That the tariff was unlawful and has never taken effect.

Tariffs not Concurred in are Unlawful

13. A properly accredited chairman of a tariff committee published tariffs for certain carriers for which he was the duly constituted attorney-in-fact for that purpose. A carrier declining to concur in his tariffs put a new cover on them and filed them as its own tariffs without securing the concurrences of the other carriers named therein. *Held*, That the tariffs so adopted were unlawful and could not be used by the carrier.

Maintenance of Rate Reduced After Complaint Filed

14. *January 6, 1908.* On December 2 it was decided that when a rate is reduced after answer has been made and before hearing, the report disposing of the proceeding shall carry with it an order directing the defendant to maintain that rate as a maximum for not less than two years. On December 6 it was decided that orders in special reparation cases shall include a clause providing that the new rate or regulation upon the basis of which reparation is granted shall be maintained for a period of at least one year.

It is now agreed that the two years so required in orders upon formal complaints and the one year in orders in special reparation cases shall run from the date of the order and not from the date when the reduced rate or new regulation became effective.

Delivering Carrier Must Investigate Before Paying Claims

15. A delivering carrier cannot accept the authority of a connecting line, and thus shield itself from responsibility in paying claims, but must investigate and ascertain the lawful rates and allow the claims or not upon the basis of its own investigations.

Delivering Carrier Must Collect Undercharges

16. Even though an undercharge results from an error in billing by the initial carrier or a connection, the delivering carrier must collect the undercharge. The legal expense attending its efforts to

collect undercharges in such cases would seem to be a valid claim against the carrier through whose fault the mistake was made.

Feeding and Grazing in Transit

17. In connection with the published privilege of feeding and grazing in transit a carrier may lawfully provide in its tariffs that it will furnish feed at current market prices, and bill the cost thereof, together with an addition of 10 per cent or other reasonable percentage to cover the value of its services, as advance charges.

Free Transportation of Dead Body of Employee

18. When an employee of a carrier has been killed or has died in service at a distant point, the carrier may, free of charge and as a general incident to the relation between it and its employees, lawfully transport the body to the home of the deceased for burial.

NOTE.—By an amendment to the act, effective April 13, 1908, Congress made it lawful for carrier to give free transportation to remains of person killed in its employ and also to his family.

Expense Incurred in Preparing Cars for Shipments Cannot be Paid by Carrier in the Absence of Tariff Provision Therefor

19. Not having box cars available for the movement of machinery, cattle cars were supplied at the request of the shipper, who lined them with tar paper and felt in order to protect his shipments from weather conditions. *Held*, That in the absence of tariff authority the carrier cannot lawfully reimburse the shipper for the expense so incurred.

Special Understandings Between Shippers and Carriers, not Published in Their Tariffs, of no Valid Effect

20. A shipper had an understanding with agents of carriers that when he delivered shipments to them consigned to stations at which there were no agents the carriers would so advise him and hold the shipments for further direction. In a given case a carrier neglected to so advise him and to hold the shipment, but billed it and sent it forward to a nonagency station as a prepaid shipment. *Held*, That the shipper must pay the charges, and that no understanding of that nature, not incorporated in the published tariffs of the carrier, will operate to relieve the carrier from the duty of collecting the lawful charges.

Caretakers of Milk

21. The provision of law relating to the free transportation of necessary caretakers of live stock, poultry, and fruit cannot be construed to include caretakers of shipments of milk.

Free Carriage of Company Material

22. It is not unlawful for a carrier to return its own property free of charges, to the manufacturers thereof situated on its own line, for exchange or repair.

Extension of Time on Through Passenger Tickets

23. A through rate must be recognized as a unit, and an extension of time granted on a through ticket under a tariff regulation of a carrier whose line is a part of that route is sufficient to cover the transportation over the lines of other carriers in the route. The proper practice is for the carrier so granting the extension to indorse it upon the portion of the ticket to be taken up by the last carrier, and also upon the coupon of each carrier.

(This ruling was reversed by the Commission on March 2, 1908. See No. 43.)

Canadian Rates

24. A Canadian carrier having joint through fares from a point in the United States to points on its own line may not depart from those fares by the device of placing an agent at such point in the United States with authority to sell tickets from the first station on its line north of the Canadian boundary to other points on its line in Canada at the rate of 1 cent a mile, "to be sold only to such persons as produce a certificate of the immigration agent of the Canadian government." Besides being a device, tickets so limited to particular persons operate as a discrimination. But in the absence of such joint through fares from a point in the United States to points on its own lines this Commission has no jurisdiction over the fares actually charged and collected for the separate transportation between points in Canada.

Refund of Drayage Charges Caused by Misrouting

25. Where a shipment was routed contrary to the express directions of the shipper and the consignee was compelled to move the shipment by dray from the station of delivering carrier to the destination to which it would have been switched if properly routed, the carrier may, under the particular circumstances of the case, be authorized by the Commission to refund to the shipper the reasonable actual cost of the drayage.

Use of Intrastate Commutation Ticket in Interstate Journey

26. In the absence of a provision in the commutation contract forbidding it, a commutation ticket may be used between the points named on it in connection with an interstate journey on trains that stop at such points.

Excursion Ticket Invalidated Through Failure of Carrier to Make Connection

27. *January 13, 1908.* A passenger traveling on a special limited excursion ticket with stop-over privilege, leaves a stop-over point in ample time to make all connections and meet conditions of ticket; but through successive delays to trains misses connections at a certain junction, making the ticket twenty-four hours out of date. Regular fare was collected for the balance of the return trip. *Held,* That the carriers ought to make the ticket good, it having become invalid through their fault.

Tickets for Transportation and Meals, Hotel Accommodations, etc.

28. A carrier publishes a tariff offering certain transportation fares and rates for personally conducted tours with tickets to cover meals, hotel accommodations, etc., and declines to sell the transportation ticket to anyone who does not also purchase the tickets covering meals and hotel accommodations. *Held,* That the two matters must be kept separate, and carriers may not decline to sell such transportation without tickets for meal and hotel accommodations.

Quotations from Correspondence of the Commission

29. The Commission requests that if extracts from its correspondence are sent out by carriers, such extracts be made sufficiently full, or that sufficient of the correspondence be presented, to give a complete view and understanding of the meaning of the ruling and of the circumstances discussed, or of the inquiry answered therein.

Carriers' Monthly Reports to be Furnished in Duplicate

30. *January 15, 1908.* Beginning as of January 1, 1908, monthly reports of revenues and expenses, as provided for in the order of the Commission, bearing date July 10, 1907, shall be filed in duplicate, and on or before the last day of the month immediately following the month covered by the report shall be deposited in the United States Post-Office, postage prepaid, and plainly addressed to the Division of Statistics and Accounts, Interstate Commerce Commission, Washington, D. C.

Demurrage Charges on Astray Shipments

31. An astray shipment of perishable merchandise was not rebilled to its proper destination, but was sold by the consignee at the point where he found it. The delivering carrier at that point had assessed demurrage charges before the shippers were able to locate the car. That carrier expressed its willingness to waive the demurrage if the Commission permits. *Held,* That demurrage charges stand in the

same light as transportation charges and may be adjusted under Rule 74 of Tariff Circular 15-A.

Demurrage Charges

32. *February 3, 1908.* The delivering carrier is under obligation to collect demurrage charges assessed by it, although such charges may have accrued as the result of error on the part of another carrier.

The shipper should pay the lawfully published rate via the route over which the shipment moved, pending dispute, and then make claim for refund. The Commission, in the adjustment of misrouting claims, will not ordinarily include demurrage charges. (See Rule 81, Tariff Circular 15-A.)

When the delivering carrier demands more than the lawful rate, the consignee is released from the obligation to pay demurrage charges accruing during the pendency of the dispute as to the lawful rate.

Reduced Transportation for Federal, State and Municipal Governments

33. Under section 22 of the act to regulate commerce, carriers may grant reduced rates for the transportation of property for the United States or for state or municipal governments, under arrangements made directly with such government and in which no contractor or other third person intervenes, without filing or posting the schedule of such rates with the Commission. (See No. 36.)

Coal Used for Steam Purposes not Entitled to Reduced Rates

34. A tariff providing for reduced rates on coal used for steam purposes, or that the carrier will refund part of the regular tariff charges on presentation of evidence that the coal was so used, is improper and unlawful. That is to say, that the carrier has no right to attempt to dictate the uses to which commodities transported by it shall be put in order to enjoy a transportation rate.

Use of State Passes in Interstate Journeys Unlawful

35. Passes granted to state railroad commissioners cannot lawfully be used in interstate journeys.

Rates on Shipments for the Federal Government

36. *February 4, 1908.* If title to property, such as postal cards, passes to the Government at the point of manufacture, the carrier may agree upon a rate to be applied for transporting it for the Government to another point, without filing a tariff with the Commission. But if the manufacturer under his contract is required to deliver to the Government at such other point, the transportation

must be under the published tariff rate. In other words, if the shipment is made directly by the Government, this rate may be fixed by the carrier without posting and filing the tariff, but not otherwise. (See No. 33.)

Passes to Caretakers

37. Passes to caretakers must be in the form of trip passes limited to the journey on which the person to whom the pass runs acts as a caretaker. It may also cover the return journey. Annual or time passes to caretakers are unlawful. (See No. 1.)

Reparation on Informal Complaints

38. The phrase "within a reasonable time," on page 2 of Special Circular No. 1, relating to "Special reparation on informal complaints," is now defined as a period of time not exceeding six months. And reparation will not be authorized by the Commission, except in cases involving special circumstances, unless the rate upon the basis of which adjustment is sought has been actually established by published tariffs within six months after the date of the shipment in question, or unless the claim is filed with the Commission within six months after the shipment moved.

Accrued Demurrage Charges

39. *March 3, 1908.* A shipper who had customarily paid his freight charges in checks was called upon, under a general order issued by the carrier, to pay his freight charges in cash during the recent financial disturbances. While the local agent was endeavoring to get authority from the home office of the carrier to continue to accept checks from this shipper demurrage charges accrued. *Held,* That they could not lawfully be refunded.

Printing of Briefs

40. Rule XIV of the Rules of Practice is amended by the following paragraph, to be inserted between the first and second paragraphs as they now stand:

"Briefs shall be printed in twelve-point type, on antique finish paper, 5 $\frac{7}{8}$ inches wide by 9 inches long, with suitable margins, double-leaded text and single-leaded citations."

Division of Proceeds of Sale of Shipment to Pay Freight Charges

41. A shipment refused by the consignee and upon which demurrage had accrued was sold by the delivering carrier, but did not realize the amount of the transportation charges and the amount paid for unloading. Upon the request of the carrier the Commission declined to express its views as to the manner in which the proceeds

of the sale should be divided among the several carriers participating in the movement, that being a matter to be determined by the interested carriers for themselves.

Rates on Return Movements

42. A shipment of mining machinery went to destination over the lines of one carrier and was subsequently returned for repairs over lines of another carrier. The published tariff, to which all carriers participating in both movements were parties, provided for half rates on such return movements when over the same route as the original out-bound movement. A portion of the route of the return movement was over the line of a carrier which also formed a part of the through route over which the out-bound shipment moved. *Held*, That, the regular tariff rate was properly applied on the return movement; that the return movement under through billing must be treated as a unit; and that there could be no refund on the basis of the half rates for any portion of such through return movement.

Extension of Time on Through Passenger Tickets

43. The rule heretofore announced under this head to the effect that an extension of time on a through ticket by a carrier whose line is a part of that route is binding on the lines of other carriers in the route, is now withdrawn. (See No. 23.)

Limitations of Passenger Tickets

44. A passenger traveling on a round-trip ticket containing the provision that "This ticket will be good for return trip to starting point prior to midnight of date punched by selling agent in column 2. Final limit;" did not reach the last connecting carrier before the date punched on the ticket. The passenger was required to pay full fare on the last connecting line. *Held*, That a refund could not lawfully be made.

Passengers on Freight Trains

45. Upon inquiry made by a carrier the Commission holds that it may not confine the right to travel on freight trains to a particular class, such as drummers and commercial agents, but if the privilege is permitted to one class of travelers it must be open to all others on equal terms and conditions.

Reparation on Informal Pleadings—Passenger Tickets

46. The rules of the Commission relating to reparation on informal complaints do not extend to passenger traffic, but are limited to freight traffic only. The Commission will not entertain applications for authority to refund on passenger tickets on the ground that the fare was reduced shortly after the ticket was sold.

Tariff Taking Effect on Sunday

47. *March 9, 1908.* Under a tariff schedule regularly filed, showing a change in published rates, it happened that the thirty days' notice required by law expired on Sunday. *Held*, That the tariff is lawful.

May a Shipper Offset a Claim Against a Carrier by Deducting from Freight Charges on Shipment?

48. *March 10, 1908.* A shipper having a money demand against an interstate carrier sought to offset it against the amount of a freight bill which he owed the carrier upon a shipment of merchandise. May this lawfully be done? *Held*, That the two transactions have no relation one to the other, and that such a deduction from the lawful charges on the shipment could not be made.

Benefit of Reparation Orders Extends to all Like Shipments

49. No carrier may pay any refund from its published tariff charges save with the specific authority of the Commission. When an informal or formal reparation order has been made by the Commission the principle upon which it is based extends to all like shipments, but no refunds may be made by the carrier upon such like shipments except upon specific authority from the Commission therefor.

When Joint Agent Publishes a New Rate Between Two Points, Without Canceling the Old Rate Duly Published by One of the Carriers the Old Rate on That Line Remains in Effect

50. The published tariffs of an interstate carrier named a rate of 20 cents on a given commodity between specified points. On October 1, 1907, under a proper power of attorney, a joint agent of all carriers serving those two points published a rate of 22 cents. He failed to cancel the 20-cent rate and it was not formally canceled by the carrier that published it until January 14, 1908. *Held*, That because of the failure of the joint agent and of the carrier that published it to cancel that rate in the manner required by section 6 of the act, and Rule 8 of Tariff Circular 14-A, the 20-cent rate remained the lawful rate of that carrier until formally canceled on January 14, 1908.

The Use of Pullman Cars at Stop-over Points Cannot be Limited to Members of a Particular Club

51. *March 11, 1908.* A carrier desiring to make excursion rates to a point where a convention is to be held wishes to accord to members of certain clubs the privilege of occupying the sleeping

cars while the convention is in session. *Held*, That the carrier may lawfully arrange an excursion rate to such point and return, the rate to include sleeping-car accommodations to and from that point with the privilege of occupying the car at that point during the convention; but that the Commission does not understand that the carrier may limit the privilege to the members of any particular club.

Rate Eastbound Cannot be Applied Westbound Unless so Published

52. A mixed carload of meat eastbound was diverted at the Ohio River on account of a flood, and, by order of the shipper, was taken by a roundabout route to a point east of its destination and was thence hauled westbound to destination. The mixed carload rate applied on eastbound shipments, but the tariffs provided no mixed carload rate on westbound shipments. *Held*, That such interruption of the eastbound movement would not justify the application of a mixed carload rate on the westbound movement to destination.

Transit Privilege not Availed of Cannot be Renewed After the Expiration of the Time Allowed in the Tariffs

53. A consignor of sheep, which were being grazed in transit, was unable, because of a severe snowstorm, to get the sheep to the station before the grazing privilege expired according to the published time limit. Upon inquiry of the carrier it was held that it cannot lawfully take the sheep forward on the rates which would have been applicable under the tariff had the sheep been shipped within the time limit.

Demurrage on Interstate Shipments

54. *March 16, 1908.* Questions of demurrage and car service on interstate shipments are within the jurisdiction of the Interstate Commerce Commission, which does not concur in the view that such matters, even when pertaining to interstate shipments, are within the control of state commissions.

Free Pass to Railway Employee on Leave of Absence

55. An employee who has not been suspended or dismissed from the service, but is on leave of absence and is still carried on the roll of employees of the carrier, is still an employee and as such may lawfully use free transportation.

NOTE.—This ruling was made by the Commission on March 16, 1908; by act of Congress approved April 13, 1908, carriers were given the right to give free transportation to "furloughed, pensioned, and superannuated employees."

Hours of Service Law—Street Car Companies

56. *April 7, 1908.* Upon inquiry whether the hours of service law applies to electric street car lines which are interstate carriers: *Held*, That it applies to all railroads subject to the provision of the act to regulate commerce, as amended, including street railroads when engaged in interstate commerce.

Reshipping Rate from Primary Grain Markets

57. May a carrier lawfully cancel its local, reconsigning, proportional, and other rates, on outbound shipments of grain from a primary market like Kansas City, where no grain originates upon which the local rate would be applicable and substitute for them a reshipping rate applicable on all outbound grain?

Responding to the inquiry the Commission approved the suggestion, but declines in advance to express approval of such reshipping rate when it makes less than the published rate from an intermediate point.

Declaring a False Valuation in Violation of Section 10

58. Upon an inquiry from a banking house whether it may lawfully declare a value of \$5,000 upon a package of negotiable bonds of the market value of \$10,000 and pay the express charges on the basis of the declared value, upon the understanding that in case of the loss of the bonds the express company will be responsible only for the amount so declared, it was held that a shipper falsely declaring the value of a package delivered to an express company for transportation violates section 10 of the act.

Carriers Must Send Car Through or Transfer Shipment En Route

59. Where connecting lines have united in publishing a joint through rate between two points it is the sense of the Commission that it is the duty of the carriers in the route to provide the car and permit it to go through to destination or to transfer the property en route to another car at their own expense.

No Refund to Passenger Who Exceeded Stop-over Limit

60. A passenger, while availing himself of a stop-over privilege at a certain point in his journey, was subpoenaed as a witness in a proceeding in a civil court, and obeying the process was not able to proceed on his journey within the time limit of the stop-over. As a result he was compelled to pay an additional fare from that point to destination. *Held*, That a refund could not lawfully be made.

Storage Charges on Trunk Accruing Because of Injury to Passenger

61. The Pullman car in which a passenger was traveling was derailed and went over an embankment, resulting in an injury to a passenger, who, in consequence, was detained for some time. His trunk was taken on to destination and storage charges accrued on it until claimed by him. *Held*, That the storage charges might lawfully be refunded.

BULLETIN No. 2**Conference of Rulings of The Interstate Commerce Commission****Issued July 9, 1908**

These rulings have been made by the Commission in conference, on the dates indicated, upon questions raised or submitted in correspondence. They have not heretofore been officially published by the Commission. Some of such decisions have been incorporated in Commission's revised tariff regulations and administrative rulings. Succeeding bulletins will be issued as circumstances may require or justify.

Boats that are not Common Carriers

62. *April 14, 1908.* Certain carriers have been in the habit of advancing the charges of sailing vessels, boats, and barges bringing vegetables to their terminals to be forwarded to interstate destinations, and of entering the amount on waybills as charges in addition to their tariff rates. Upon inquiry whether the carriers may lawfully continue this practice it was held that if the boats are common carriers, making regular trips and offering their services to the general public, they must file tariffs and the practice must be discontinued until they do so.

Servants may not Use Free Passes

63. The word "family," as used in the antipass provision of the act, does not include servants. (See No. 93.)

Absorption of Switching Charges

64. The tariff of a carrier provided for the absorption of switching charges. Upon inquiry it was agreed that the Commission could not sanction a practice under which switching charges are paid by the consignee, the carrier deducting the amount of the switching charges from the published rates and collecting the balance from the consignee. In all cases the carrier must collect the full tariff rates. Where its tariffs provide for absorptions of switching charges the carrier must pay the switching company for its services and not leave that to be done by the shipper.

Special Rates for United States, State, or Municipal Governments

65. *April 18, 1908.* Section 22 of the act authorizes the carriage, storage, or handling of property free or at reduced rates for the United States, state, or municipal governments. As has before been decided, such transportation can be granted without the publishing and filing of a tariff therefor only in instances where the arrangement is directly between such government and the carrier; but it is considered permissible for carriers to incorporate in their lawful tariffs special rates for the United States, state, or municipal governments applicable only to traffic consigned to such United States, state, or municipal government by name, in care of a recognized officer thereof.

Joint Rates Between a Water and Rail Carrier Subjects the Former to the Provisions of the Act

66. *May 4, 1908.* A steamboat line agreed upon joint rates with a rail line for certain passenger and freight traffic. *Held,* That it could not unite with a railroad company in making a through route and joint rate on a particular traffic without subjecting all its interstate traffic to the provisions of the law and to the jurisdiction of the Commission.

Handholds—Safety-Appliance Law

67. The law makes no distinction between passenger and freight cars, and handholds must, therefore, be placed on the ends of passenger cars and cabooses.

Adjustment of Claims

68. It is not a proper practice for railroad companies to adjust claims immediately on presentation and without investigation. The fact that shippers may give a bond to secure repayment in case, upon subsequent examinations, the claims prove to have been improperly adjusted does not justify the practice.

Error by Ticket Agent

69. A station agent inadvertently failed to indorse "colonist ticket" on a regular ticket sold upon a published colonist rate. *Held,* That the connecting carriers must be paid their full proportion of the first-class rate, but that the Commission would not intervene between the initial carrier and its agent.

Effect of a Failure in a New Tariff Naming Higher Rates to Cancel the Same Rates in Prior Tariff

70. *May 5, 1908.* A carrier's tariff effective January 1, 1903,

named certain rates between two points. By a joint tariff, effective February 1, 1908, higher rates were named between the same points, but without reference to the previous tariffs or cancellation of the lower rates therein. On March 26, 1908, a supplement was filed naming the same higher rates and canceling the rates named in the tariff of January 1, 1903. *Held*, That until March 26, 1908, when the original rates were canceled, they remained in effect and were the lawful rates.

Different Fares to Different Societies Unlawful

71. A tariff covering daily picnic excursions between certain points for the season named fares for Sunday and day schools and different fares for "societies." *Held*, That the tariff is discriminatory and that the fares for the school picnics should be the same as for society picnics.

Reconsignment Privileges and Rules

72. Usually the combination of local rates is higher than the through rate. Frequently a shipper desires to forward a shipment to a certain point and have the privilege of changing the destination or consignee while shipment is in transit, or after it arrives at destination to which originally consigned, and to forward it under the through rate from point of origin to final destination. Many carriers grant such privilege and generally make a charge therefor.

The privilege is of value to the shipper, and in order to avoid discrimination it is necessary for carrier that grants such privilege to publish in its tariff that fact, together with the conditions under which it may be used and the charge that will be made therefor. Such rules should be stated in terms that are not open to misconstruction.

Some carriers do not count a change of consignee which does not involve a change of destination as a reconsignment, while others do consider it a reconsignment and charge for it as such. The Commission holds the view that without specific qualifications the term "reconsignment" includes changes in destination, routing, or consignee. If carrier wishes to distinguish between such changes in its privileges or charges it must so specify in its tariff rules. Reconsignment rules and charges must be reasonable, and a charge that would be reasonable for a diversion or change of destination might be unreasonable when applied to a simple change in consignee which did not involve change in destination or more expensive delivery.

Effective Date of Tariff Filed by a Carrier When First Coming Under the Law

73. A carrier, under its arrangements for the first time to participate in interstate transportation, failed to note an effective date on its first tariff schedule. *Held*, That being that carrier's first tariff it became effective as soon as filed.

Hours of Service Law

74. Employees deadheading on passenger trains or on freight trains and not required to perform, and not held responsible for the performance of, any service or duty in connection with the movement of the train upon which they are deadheading, are not while so deadheading "on duty" as that phrase is used in the act regulating the hours of labor.

Validation of Tickets

75. *May 12, 1908.* The condition that a round-trip passenger ticket shall be validated for the original purchaser by carrier's agent at a given point is one of the conditions which affects the value of the service rendered the passenger and one of the conditions that must be observed the same as the rate under which the ticket is sold, which must therefore be stated in the tariff under which it is sold. The tariff may provide for validation at numerous points, and it may provide for validation at any point intermediate to the original destination named in the ticket. The conditions stated upon the ticket should not conflict with the tariff provisions, but if in any case there should inadvertently be conflict between the tariff provisions and the conditions stated on the ticket the tariff rule must govern.

Redemption of Passenger Tickets

76. The unused portion of a passenger ticket, when presented by the original holder to the carrier that issued it, may lawfully be redeemed by the carrier by paying to the holder the difference between the value of the transportation furnished on the ticket at the full tariff rates and the amount originally paid for the ticket.

Transit Privileges not Retroactive

77. *May 14, 1908.* Rule No. 6 of Bulletin No. 1, providing that the benefit of reconsignment privileges cannot be given retroactive effect is held to include cleaning, milling, concentration, and other transit privileges.

Grain Doors

78. *June 1, 1908.* A carrier may not lawfully reimburse shippers for the expense incurred in attaching grain doors to box cars unless expressly so provided in its tariff.

"Private Side Tracks" and "Private Cars" Defined

79. *June 2, 1908.* (1) A private side track, as this expression is used in the opinion In the Matter of Demurrage Charges on Privately Owned Tank Cars, is one which is not owned by the railroad, is outside the carrier's right of way, yards, or terminals, and to which the railroad has no right of use superior to the right of the shipper. This definition is based, as we think it should be based, upon consideration of the carrier's right to the use of the track rather than the ownership of the land or rails.

(2) A private car is defined in the opinion as "a car owned and used by an individual, firm, or corporation for the transportation of the commodities which they produce or in which they deal." It will include also cars owned and leased to shippers by private corporations.

(3) The rule as to demurrage charges on private tank cars is applicable to all other private cars used by the railroads and paid for on a mileage basis.

(4) It is not the intention of the Commission that its ruling shall be given a retroactive effect. The demurrage question has been in a state of great confusion, and the desire of the Commission is to establish a uniform, fair, and practicable system for the future. Claims for refund of demurrage charges previously collected in accordance with regular tariff rules will not be entertained with favor.

Shipment That Moved in Under a Former Tariff Does not Lose the Benefit of Transit Privilege Canceled Pending the Out Movement

80. *June 9, 1908.* A tariff enabled shippers to concentrate commodities on local rates at a certain point for shipment within a named period in carload lots, the in-bound billing to be surrendered and through rates from point of original shipment to apply. Before the period for taking advantage of this privilege had expired a new tariff made a new arrangement. *Held,* That with respect to shipments that had moved to the concentrating point under the old tariff and which moved out within the period therein allowed, the old rate should apply.

Supplementing Mileage Books By Paying Regular Local Mileage Rates

81. The practice under a published tariff rule which permits the holder of a mileage book which does not contain enough coupons to enable him to complete his journey to pay for the balance of the journey at the regular local rate per mile, as published by the carrier, is not unlawful.

Chartering Trains

82. It is not unlawful for a railroad company to publish a tariff

under which a locomotive and train of cars may be chartered at a named rate, tickets for the journey on that train to be sold by the person chartering the train.

Blockade By Flood

83. A carrier accepted a carload shipment for movement to a point beyond its line. After delivering the shipment to a connection at a junction point it was advised that the connecting line had been closed by floods. The initial carrier accepted the return of the car from that line and ordered it forward to destination via another route carrying higher rates, taking this action without instructions from the shipper. *Held*, That the initial line was responsible to the shipper for the resulting increase in the transportation charges.

A Commodity Rate Takes the Commodity Out of the Classification

84. A carrier having a high class rate on furniture with a low minimum also had a lower commodity rate with a higher minimum. In response to an inquiry whether they are privileged to use either rate as they desire: *Held*, That the only purpose of making a commodity rate is to take the commodity out of the classification. The commodity rate is, therefore, as stated in Rule 7, Tariff Circular 15-A, the lawful rate. And if the carrier does not desire to apply it on all shipments it must be canceled.

Also, *Held*, That in classifications and class-rate tariffs that are issued or supplemented hereafter carriers shall carry a rule providing that whenever a commodity rate is established it removes the application of the class rate between the same points on that commodity.

If the alternative uses of class or commodity rates is necessary or desired in any instance, it may be provided by including in different sections of one and the same tariff the class and commodity rates and by including in each section the specific rule: "If the rates in section — of this tariff make a lower charge on any shipment than the rates in section — of this tariff, the rates in section — will be applied." Similar authority for use of a distance tariff is found in Rule 10, Tariff Circular 15-A.

Substituting tonnage at Transit Point

85. *June 25, 1908.* A milling, storage, or cleaning-in-transit privilege is established on the theory that the commodity may be stopped en route for the enjoyment of such a privilege, and the commodity or its product be forwarded under the application of the through rate from original point of shipment. It is not expected that the identity of each carload of grain, lumber, salt, etc., can or will be preserved, but in the opinion of the Commission it is unlawful to substitute at the transit point, or forward under the transit rate or commodity that does not move into that point on that same rate.

Posting Tariffs at Stations

86. Under the order of the Commission of June 2, 1908, entitled "In the Matter of Modification of the Provisions of Section Six of the Act with Regard to Posting Tariffs at Stations," if a subsidiary or small connecting line has authorized the parent company, or principal connecting line, to publish and file for it all of its tariffs, tariffs so issued and filed on its behalf will be included in the complete public tariff files of the parent or issuing line, and it will not be necessary for such subsidiary or small line to maintain an additional complete public file.

Transportation for Eating Houses Operated By or For Carriers

87. Carriers subject to the act may provide at points on their lines eating houses for passengers and employees of such carriers, and property for use of such eating houses may properly be regarded as necessary and intended for the use of such carriers in the conduct of their business. Such eating houses, however, must not serve the general public, or any portion thereof, with food prepared from commodities which have been carried at less than the full published rate, and no utensils, fuel, or servants at all employed in serving others than passengers and employees of the carrier as such should be carried at less than tariff rates. Such privileges as may be extended under this rule shall be applied only as to points local to the line on which the eating house is situated.

Hours of Service Law

88. The specific proviso of the law in regard to hours of service is: "That no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places, and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period on not exceeding three days in any week."

These provisions apply to employees in towers, offices, places, and stations, and do not include train employees who, by the terms of the law, are permitted to be or remain on duty sixteen hours consecutively, or sixteen hours in the aggregate in any twenty-four-hour period, and who may occasionally use telegraph or telephone instruments for the receipt or transmission of orders affecting the movement of trains.

Section 3 of the law provides that:

"The provisions of this act shall not apply in any case of casualty or unavoidable accident or the act of God; nor where the delay was

the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time said employee left a terminal, and which could not have been foreseen."

Any employee so delayed may therefore continue on duty to the terminal or end of that run. The proviso quoted removes the application of the law to that trip.

In the Matter of the Use of Tariffs Containing Long and Short Haul Clauses, Maxima Rules, and Alternative Rate or Fare Provisions

89. Upon application of certain carriers: *It is ordered*, That the terms of the Commission's Special Circular No. 6, Tariff Department of January 7, 1908, be, and they are hereby, extended to October 1, 1908, and that no change other than the extension of time is authorized in the terms or provisions of said circular.

It is further ordered, That the Commission hereby announces that it will not hereafter grant further extension of time in this matter, either by general order or in individual cases, but that from and after October 1, 1908, the Commission will adopt such means as may be necessary to deal with violations of the law or unlawful use of tariffs.

Jurisdiction of Act Over Local Belt or Switching Lines

90. *June 29, 1908.* The question is asked, "Is a belt line owned by a municipality, which participates in interstate movements, subject to the jurisdiction of the act and of the Commission?" *Held*, that it is subject to such jurisdiction.

Misrouting via Line That Has No Tariff on File

91. A shipment was misrouted and passed over a route via a part of which no rate was filed with the Commission, and was thus subjected to a higher charge than the through rate via the proper route. *Held*, that misrouting carrier may be authorized to make refund on account of its error in misrouting shipment, and that carrier which participated in the transportation without lawful tariff applicable thereto should be dealt with through the Department of Prosecutions.

A Much Longer and More Indirect Route not a Reasonable Route

92. A shipment was tendered destined to a certain point the direct route to which was over the lines of two carriers, a distance of 358 miles, the rate via that route being 22 cents. It was possible to send the shipment around over the lines of three carriers, a distance of 617 miles, and secure a combination rate of only 19 cents. Application for refund was made account the difference between the rates. *Held*, that the claim for refund should be denied on the ground that the much longer and indirect route is not a reasonable route.

Use of Passes By Servants

93. Opinion expressed on April 14, 1908, on the subject of use of passes by servants, is modified; and it is *Held*, that a household servant when traveling with a member of the family entitled to a pass is included within the term "family" as used in the act. (See No. 63.)

Misrouting Involving Carriers not Subject to the Act

94. *June 30, 1908.* A shipment was tendered to a carrier in North Carolina, destined to California. Shipper requested that it be sent via New York and the Isthmus of Panama. Shipment was forwarded all rail under a rate alleged to be higher than would have applied via the route indicated. *Held*, that the Commission cannot authorize refund because no tariffs are on file with the Commission via the route over which the shipment moved, and there is therefore no official measure of the accuracy of the claim for overcharge or the amount thereof.

Leasing Carriers' Property in Consideration of Lessee's Shipments

95. A carrier leases a part of its property to a certain industry under a contract which contains the obligation on part of the lessee industry to make all of its shipments by the line of the lessor carrier. Such a provision plainly implies that the traffic so furnished by the lessee and so secured by the lessor is an important and substantial consideration which might amount to a concession in the rates for transportation, and, therefore, be an unlawful device or discrimination. The Commission expressed doubt as to the propriety of the practice.

Notice as to the Issuance of Passes

96. It appearing that the ruling issued by the Commission on the 9th day of June, A. D. 1908, relative to the issuance and use of passes, should be modified in certain respects relating to the forms of passes to persons eligible to receive free transportation under the act to regulate commerce, it is ordered that said ruling shall be amended to read as follows:

Many abuses in the issuance and uses of passes have been discovered by the Commission which it is desired to correct, and to this end, and because of the misinterpretation of the law by carriers generally, the Commission at this time makes announcement that it will recommend the indictment and prosecution of all carriers and persons issuing passes to, or allowing the use of passes by, any persons not included within the designated classes to whom free transportation may be given by carriers subject to the act to regulate commerce as set forth in said act. Among those not included under the provisions referred to are the following:

1. Officers or employees of news companies other than newsboys.
2. Officers or employees of telegraph or telephone companies, excepting when personally engaged in operation, extension, repair or inspection of lines upon or along the railroad right of way and used in connection with the operation of the railroad.
3. Officers or employees of surety, transfer, and baggage companies, except baggage agents.
4. Officers or employees of carriers not subject to the act to regulate commerce, including officers and agents of steamship and stage lines not subject thereto.
5. Officers or employees of subsidiary corporations, which corporations engage in any employment for, or render any service to, other than the carrier, save that such officers or employees may be granted free transportation when engaged on the business of the carrier.
6. Families of local attorneys, surgeons, and others who are not regularly employed by carriers.

Each pass issued must bear upon its face the name of some person belonging to a class named in section 1 of the act as eligible to receive free transportation. In addition to such person so named a pass may also carry not to exceed a specified number of unnamed persons of any class eligible to receive free transportation; the number and the class to which such person belongs being specified upon the face of the pass. That is to say, passes in the following forms will be recognized by the Commission as legal:

"Pass John Smith, President, car, and five officers and employees of the X. Y. & Z Railway."

"Pass J. R. Barner and six linemen, foreman, and force of the Western Union Telegraph Company. Good only when traveling in connection with the construction, maintenance, or operation of the lines of the Western Union Telegraph Company on the right of way of this A. B. C. Railway Company."

"Pass one extra messenger of the Southern Express Company when presented with letter signed by Superintendent, Assistant Superintendent, or Route Agent of said Express Company, authorizing use and giving name of person to be passed."

"Pass John Smith, section foreman, and six employees of X. Y. & Z. Railway."

The Commission holds that the word "family," as used in section 1 of the act to regulate commerce, includes those who are members of, and who habitually reside in, the household of the person eligible to receive family passes, including household servants when traveling with the family or with any member thereof, and relatives who are in fact dependent upon such person, although not actually residing in his household. The Commission will, therefore, view passes in the following form as lawful:

"Pass John Smith, wife, two sons, three daughters, and two servants."

"Pass Mrs. John Smith and daughter, account John Smith, Agent X. Y. & Z. Railroad Company at Washington, D. C."

The name of the person presenting the pass must appear upon it. Passes intended to be used in the absence of the head of the family whose occupation makes the issuance of passes lawful must, in addition to the name of said head, show the name of the person using the same. For instance, a pass to be used by John Smith, his wife, or his daughter, separately, should read:

"Pass John Smith, Mrs. John Smith, and Miss Mary Smith, account C. & O. Agent at Richmond, Va."

Every pass to an officer or employee of a carrier other than the one issuing the pass, shall indicate the name and rank of the person to, or on behalf of whom, such pass is issued, as well as the name of the carrier employing him.

The Commission construes the act, so far as it relates to railway-mail service employees, as giving such employees the right to receive free transportation when on duty in their cars, or when traveling under orders from a superior officer. The Commission does not now undertake to say how far this portion of the act to regulate commerce is modified or controlled as regards railway-mail service employees by other statutes or by contracts between carriers and the Post-Office Department.

The Commission will recognize any rail or water carrier filing a tariff, joint or local, with the Commission, as a carrier subject to the act so far as the issuance of passes to its officers and employees may be concerned. Where a carrier has no tariffs on file with the Commission, and does not acknowledge itself subject to the Commission's jurisdiction, the Commission will regard the issuance of passes to its officers or employees as unlawful, without, however, thereby passing upon the question of the jurisdiction of the act over such carrier in so far as it may be necessary to assert such jurisdiction. In this regard reference is made to *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co. et al.*, 13 I. C. C. 266, and *In Re Petition Frank Parmelee Co.*, 12 I. C. C. 46. By reference to these decisions it will be seen that among the carriers not subject to the act are ocean carriers to nonadjacent foreign countries and domestic carriers by wagon, stage, or automobile. Carriers covered by these decisions are not eligible to file tariffs or receive passes.

The Commission reaffirms Rule 63 of Tariff Circular 15-A of this Commission.

The Commission cannot undertake, in any case, to determine whether or not individuals are within any of the classes mentioned in section 1 of the act as eligible to receive free transportation.

The Commission will not regard as unlawful allowance of use, or the use of passes merely irregular in form under this ruling, during the present calendar year. Passes, however, issued to persons not eligible to receive the same must be called in at once, as well as passes so loosely framed that persons not eligible to receive free transportation may be carried upon them. That is to say, a pass to "John Smith, family, and household servants," although irregular in form, will not be regarded by the Commission as unlawful prior to January 1, 1909. A pass, however, to "John Smith, car, and party," being

susceptible of use for the transportation of persons not within the act, should be immediately corrected.

Carriers are enjoined against the destruction of records or memoranda touching the issuance of passes, and the passes themselves, coming into the hands of the carriers after use, must, until further order of the Commission, be retained for a period of not less than five years.

CHAPTER XV

Tariff Circular No. 16-A

(Cancels Special Express Companies Circulars 1 and 2)

INTERSTATE COMMERCE COMMISSION

REGULATIONS

GOVERNING THE

CONSTRUCTION AND FILING OF TARIFFS AND CLASSIFICATIONS OF EXPRESS COMPANIES

ADMINISTRATIVE RULINGS AND OPINIONS

ISSUED BY ORDER OF COMMISSION
OF JUNE 27, 1908

EFFECTIVE AUGUST 1, 1908

**REGULATIONS ISSUED BY THE INTERSTATE COMMERCE
COMMISSION GOVERNING THE CONSTRUCTION AND FIL-
ING OF TARIFFS AND CLASSIFICATIONS FOR USE BY EX-
PRESS COMPANIES, COMMON CARRIERS, AS DEFINED IN
THE ACT TO REGULATE COMMERCE**

Issued by order of Commission of June 27, 1908
Effective August 1, 1908

Tariffs and Classifications

Tariffs that are lawfully on file with the Commission on August 1, 1908, will be considered as continued in force, and until they can be properly reissued may be amended without complying with the requirements of these rules as to the number and volume of supplements, and as to showing concurrence forms and numbers. All tariffs issued or reissued later than August 1, 1908, must conform to all of these rules. The Commission may direct the reissue of any tariff at any time. A tariff publication as to which these regulations have not been conformed to is subject to rejection by the Commission when tendered for filing.

The term "joint rate," as used herein, is construed to mean a rate that extends over the lines of two or more carriers, and that is made by agreement between such carriers.

"Joint tariffs" are those which contain or are made up from such "joint rates."

Tariffs Must be Printed

1. All tariffs must be printed on hard calendered paper of good quality from type of size not less than 6-point full face. Stereotype, planograph, or other printing-press process may be used. Tariff schedules with the body of the tariff printed, as above provided, with rates filled in with typewriter or ink, may be used for filing and posting.

Form and Size of Tariff

2. All tariffs must be in book, sheet, or pamphlet form, and of size $9\frac{1}{2}$ by $11\frac{1}{2}$ inches. Loose-leaf plan may be used, so that changes can be made by reprinting and inserting a single leaf; but if changes are so made, no other supplements to same tariff may be issued.

3. The title-page of every tariff shall show:

(a) Name of issuing express company, express companies, or agent.

(b) I. C. C. number of tariff in bold type on upper right-hand

corner, and immediately thereunder, in smaller type, the I. C. C. number or numbers of tariffs and supplements canceled thereby. If, however, the number of canceled tariffs is so large as to render it impracticable to thus enter them on title-page, they must be shown on following page; but specific reference to such list must be entered on title-page immediately under the number of the tariff. Serial numbers of express companies may, if desired, be entered below the upper marginal line of title-page.

(c) Whether tariff is local or joint or a combination of same.

(d) Whether merchandise, commodity, or a combination of both, and the territory or points from and to which the tariff applies, briefly stated.

(e) Reference by name and I. C. C. number to the classification and exception sheets governing the tariff. Following form may be used: "Governed by the ——— classification, I. C. C. No. — and exceptions thereto, I. C. C. No. —, and supplements thereto and reissues thereof."

(f) Date of issue and date effective. Any tariff may be changed upon statutory notice of thirty days, or, under special permission from the Commission, upon shorter notice. Therefore, a provision in a tariff that the same, or any part thereof, will expire upon a given date, is not a guaranty that the tariff, or such part of it, will remain effective until that date. The Commission considers such expiration notices undesirable, as many complications have arisen through their being overlooked. Such provision, if used, must be understood to mean that the tariff, or specified part of it, will expire upon the date named unless sooner canceled, changed, or extended in lawful way. On such tariffs the term "Expires ———, unless sooner canceled, changed, or extended," must be used.

(g) Name, title, and address of officer by whom tariff is issued.

(h) On upper left-hand corner the words: "Only two supplements to this tariff may be in force at any time."

(i) On every tariff or supplement that is issued on less than thirty days' notice by permission or order or regulation of the Commission, notation that it is issued under special permission or order of the Interstate Commerce Commission, No. —, of (date) ———, or by authority of Rule ———, Tariff Circular No. 16-A.

4. Tariffs in book or pamphlet form shall contain in the order named:

(a) Table of contents, full and complete. Except that when tariff contains so small a volume of matter that its title-page or its arrangement plainly discloses its contents the table of contents may be omitted.

(b) Names of issuing express companies, including those for which joint agent issues under power of attorney, and names of carriers amenable to act to regulate commerce participating under concurrence, both alphabetically arranged. The form and number of power of attorney or concurrence by which each carrier is made party to the tariff must be shown.

(c) A tariff on a single commodity, or a few commodities, shall

contain all of that express company's commodity rates on such commodity or commodities applying from any point of origin named in the tariff to any point of destination named in the tariff.

(d) Unless alphabetically arranged, a complete index of offices from which the tariff applies and an alphabetically arranged and complete index of offices to which the tariff applies, together with the names of States in which located.

Traffic territorial or group descriptions may be used to designate points to or from which rates named in the tariff apply, provided a complete list of such points arranged by traffic territories or groups is printed in the tariff or specific reference is given to the I. C. C. number of the issue that contains such list. In this list the offices in each traffic territorial or group description shall be arranged alphabetically, or all of the offices in traffic territories or groups named in the tariff may be included in one alphabetical index, provided that points of origin and points of destination be shown separately, alphabetically, and the traffic territorial or group description in which they belong be shown opposite the several offices.

(e) Explanation of reference marks and technical abbreviations used in the tariff.

(f) List of exceptions, if any, to the classification governing the tariff which are not contained in exception sheets referred to on title-page.

(g) Such explanatory statement in clear and explicit terms regarding the rates and rules contained in the tariff as may be necessary to remove all doubt as to their proper application.

(h) Rules and regulations which govern the tariff, the title of each rule or regulation to be shown in bold type. Under this head all of the rules, regulations, or conditions which in any way affect the rates named in the tariff shall be entered, except that a special rule applying to a particular rate shall be shown in connection with and on the same page with such rate.

No Rule Shall Authorize Substituting Rate Found in any Other Tariff

No rule or regulation shall be included which in any way or in any terms authorizes substituting for any rate named in the tariff a rate found in any other tariff; but a scale of rates or a table of distance rates may be included in the tariff together with the provision, "If the use of the scale rate or the mileage rate on page — of this tariff makes a less charge on any shipment than rates named herein such lower charge will apply."

Tariff Rules and Regulations Filed and Posted May be Referred to in Other Schedules Governed Thereby

An express company or an agent may publish, under I. C. C. number, post, and file a tariff publication containing the rules and regulations which are to govern certain rate schedules, and such publication may be made a part of such rate schedules by the specific

reference "Governed by rules and regulations shown in ——— I. C. C. No. —."

A rate schedule may in like manner refer to another schedule for the governing rules and regulations.

A schedule or a publication so referred to must be on file with the Commission and be posted at every place where a schedule that refers to it is posted.

Rates

(i) The rates, explicitly stated, together with the names or designation of the places from and to which they apply, all arranged in a simple and systematic manner. Complicated or ambiguous plans or terms must be avoided.

Routes

The different routes via which tariff applies may be shown, together with appropriate reference to application of rates. When a tariff specifies routing, the rates may not be applied via routes not specified. A tariff may show the routing ordinarily and customarily to be used and may provide that, if from any cause shipments are sent via other junction points, but over the lines of parties to the tariff, the rates will apply.

Carrier's Responsibility in Routing Under Joint-rate Tariff

If a tariff contains no routing directions, the joint rates shown therein are applicable between the points specified via the lines of any and all parties to the tariff; and shipper must not be required to pay higher charges than those stated in the tariff, because the express companies have not agreed divisions of the rates via the junction through which the shipment moves. If agent of express company bills or sends shipment via a route or junction point that is covered by the tariff, but via which no division of the rates applies, it is for the express companies to agree between themselves upon the division of the rates, and the intermediate or delivering companies may demand from the company whose agent so missends shipment their full local rates for the services which they perform. (This must not be construed as conflicting with Rule 37.)

Basing Tariffs

5. (a) A basing rate tariff to be used in computing through rates between points between which no specific through rate applies may be constructed in sections, each section containing an alphabetical list of the offices and the basing rates for an individual State.

Contemporaneous with issuance of supplement to such tariff and effective on the same date, any section applying to an individual State may be reissued. Such reissue must bear the I. C. C. number of the tariff of which it is a part; the name of the State to which it

applies; the cancellation of superseded section, specifying its date and the effective date of the new section; but supplement issued contemporaneously with such reissued section may not contain any changes affecting the State to which the reissued section applies. Reissued sections under this rule will not be counted as supplements under the rule limiting the number of supplements to any tariff. Such tariff shall contain an index of the effective dates of its several sections, and such index must be kept up to date either by reissue or in supplement to the tariff.

Joint Basing Transfer Tariffs

(b) Express companies shall print, post, and file alphabetical lists of the offices reached by connecting concurring express companies, arranged by States, and designating the transfer points at which through business may be transferred, together with the rates from such transfer points to the destination offices via the lines of such connecting concurring companies. These lists shall be known as "Joint Basing Transfer Tariffs" and shall include the transfer points by which through rates may be figured, and shall provide that the lowest charge that can be computed therefrom via any transfer point named therein shall be the through charge from point of origin to destination applicable via any transfer point named therein.

Limiting Use of Terms "Missouri River Points," "General Specials," etc.

6. The terms "Missouri River points," "Puget Sound points," or similar terms shall not be used in any tariff for the purpose of indicating the points from or to which rates named therein apply unless a full list of such points is printed in the tariff or specific reference is given to the I. C. C. number of the issue that contains such list.

The term "general specials," or similar term must not be used in any tariff for the purpose of indicating the articles to which the rates apply, unless a full list of the articles included in and covered by such term is printed in the tariff or specific reference is given to I. C. C. number of issue that contains such list.

Commodity Rates Must be Specific

Commodity rates must be specific and must not be applied to analogous articles.

Commodity Rate the Only Rate That Can Lawfully be Used

7. In every instance where a commodity rate is named in a tariff upon a commodity and between specified points such commodity rate is the lawful rate and the only rate that can be used by the companies parties thereto, with relation to that traffic between those points, even though a merchandise rate or some combination may

make lower. The naming of a commodity rate on any article or character of traffic takes such article or traffic entirely out of the classification and out of the merchandise rates between the points to which such commodity rate applies, and the commodity rate so named is not modified by the provisions in the classification for extra valuation charges, limitation of liability, icing charges, or any variation of the commodity rate, unless the commodity tariff provides that classification rules will govern.

Classifications and class rate tariffs shall contain the provision that wherever commodity rates are named they remove the application of the classification scale or class rates to the same commodity and between the same points.

Rates for Mixed Shipments

Rates may be made for specified mixed shipments and will be the lawful rates for such mixtures, even though certain parts of the mixtures are covered by merchandise or commodity rates when shipped separately.

Tariff or Supplement to Tariff Shall Specify Cancellations

8. If a tariff or supplement to a tariff is issued which conflicts with a part of another tariff or supplement to a tariff which is in force at the time, and which is not thereby canceled in full, it shall specifically state the portions of such other tariff which are thereby canceled, and such other tariff shall at the same time be correspondingly amended in the regular way. It will not be necessary to give on commodity tariff or supplement reference to merchandise rate tariffs that may be affected, nor to give on merchandise rate tariffs or supplements reference to commodity tariffs, except as provided in Rule 28.

Cancellation Must be by Authorized Agent or by Express Company That Issued the Tariff Canceled

An agent who acts under power of attorney is fully authorized to act for the express companies that have named him their agent and attorney, and, therefore, it is permissible for him to cancel by his tariffs issues of such principals. A concurrence, however, does not confer authority upon either express company or agent to cancel tariffs of concurring express company and, therefore, tariffs issued under concurrences may not assume to cancel, or carry notation of cancellation of, tariffs of and issued by concurring express companies. Such cancellations must be made by the express company that issued the tariff that is to be canceled.

Cancellation Notice Must be by Supplement

If a tariff is canceled with the purpose of canceling entirely the rates named therein, or when, through error or omission, a later

issue failed to cancel the previous issue, and a tariff is canceled for the purpose of perfecting the records, the cancellation notice must not be given a new I. C. C. number, but must be issued as a supplement to the tariff which it cancels, even though such tariff may at the time have two effective supplements.

Cancellation Notice Shall Specify Where Rates Will Thereafter be Found

When a tariff or a commodity rate is canceled by supplement the cancellation notice must show where rate will thereafter be found, or what rate will thereafter apply. For example: "Rate in _____, I. C. C. No. _____ will apply," or "Merchandise rates will apply," or "Combination rate will apply," or "No rates in effect."

If a tariff is canceled with the purpose of applying in lieu thereof the rates shown in some other tariff, the cancellation notice shall make specific reference to the I. C. C. number of tariff in which such rates will thereafter be found. Cancellation of a tariff also cancels supplement to such tariff, if any in effect. If a tariff is canceled by the issuance of a similar tariff to take its place, cancellation notice must not be given by supplement, but by notice printed in new tariff, as provided in paragraph (b) of Rule 3.

Amendments and Supplements

9. A change in or addition to a tariff shall be known as an amendment, and, excepting as provided in Rules 2 and 5, shall be issued in a supplement to the tariff and shall refer to the page or pages or item or items of the tariff which it amends. Supplement shall contain full list of participating carriers.

No More Than Two Supplements at Any Time

Supplements to a tariff shall be numbered consecutively as supplements to that tariff and not be given separate or new I. C. C. numbers. There shall at no time be more than two supplements in effect to any tariff. Each supplement shall specify the supplement or supplements which it cancels, and shall also show on title-page what supplements are in effect and that such effective supplements contain all changes. For example: "Supplement No. _____ to I. C. C. No. _____." "Cancels Supplements Nos. _____ and _____." "Supplements Nos. _____ and _____ are in effect and contain all changes." The term "cancels conflicting portions" must not be used.

An amended item must always be printed in supplements in its entirety as amended.

Show Effective Date of Reissued Items and I. C. C. Reference

A tariff or a supplement which contains reissued items must not bear the notation "effective at once, except as noted," but instead must bear the notation "effective _____ except as noted in individual items." Example: "Issued _____. Effect-

ive _____, except as noted in individual items." Reissued items must bear notation "Effective [date upon which item became effective] in I. C. C. No. _____;" or "in Supplement No. _____, to I. C. C. No. _____."

Items reissued from publications that were on file prior to August 1, 1908, may show last date and reference prior to August 1, 1908.

Amount of Matter Supplement May Contain

When the effective supplements to a tariff have, in the aggregate, attained the proportions of twenty-five (25) per cent of the pages in the original tariff, with a minimum of two pages, it must be reissued before further amendments may be made.

Tariffs Must Show Icing, Lighterage, or Switching Charges, or Refer to I. C. C. Tariff Containing Them

10. In all cases where a charge in addition to tariff rate is made for icing, lighterage, or switching, the express company shall either include such charge in the tariff or refer therein to I. C. C. number of the tariff wherein such additional charge will be found.

Index to Tariffs

11. Each express company shall publish under proper I. C. C. number, post, and file a complete index of tariffs which are in effect and to which it is a party. Each index must bear on its title-page the notation "This index contains lists of tariff publications in effect on (date of issue of the index)."

Each supplement to index must bear on title-page the notation "This supplement contains corrections to and as in effect on (date of issue of the supplement)."

The title-page of index or of supplement must show the date of issue thereof, which must correspond to date shown in notations above, and must not bear any effective date. The rule requiring thirty days' notice does not apply to these indexes and their supplements. Such index shall be prepared in sections as follows and shall show: (a) I. C. C. number; (b) express company's own number; (c) index number; (d) initials of issuing express company or agent; (e) issuing express company or agent's number; (f) character of tariff or description of the articles upon which it applies; (g) where tariff applies from; (h) where tariff applies to.

NOTE.—Items (b), (c), and (e) may be omitted. Items (f), (g), and (h) will be stated in concise general terms.

First section: A list of all the tariffs as to which the express company is an initial carrier. Commodity tariffs to be entered alphabetically under names of commodities or principal commodities. Tariffs applying to different groups of the same commodity must be grouped together, e. g., "Fruits," etc.

Following the specific commodity tariffs will be entered the general commodity tariffs and the merchandise tariffs. Under each of these

heads the application of the tariffs will be described by alphabetical arrangement of the points or territory from or to which they apply, in either the "From" or "To" or "Between" column. Tariffs applying between a certain office and other offices will be listed in alphabetical order of offices for which constructed.

Second section: List of all tariffs of other express companies to which the express company is a party, arranged under commodities or merchandise as prescribed in the first section.

If the express company so desires, lists of its division sheets, official circulars, etc., may appear in this publication. Supplements need not be included in indices.

Revision and Supplements

If any changes are made, this index shall be corrected to date and be reissued each month, or supplement may be issued each month showing all changes and also what tariff, if any, shown in index is canceled or superseded by one shown in supplement, and index be reissued every six months. If supplements are used, they must be constructed in accord with specifications as to construction of index, excepting that "Additions" to and "Eliminations" from the index will be arranged under those respective heads; and each supplement must cancel preceding supplement and bring forward all changes.

Tariffs to or From Season or Summer Offices

12. Tariffs or rates applying to or from offices at which business is transacted only during certain portions of the year, or tariffs applying over water routes during season of navigation only, shall remain in force until changed in the manner provided by these regulations, and it will not be necessary to re-file with the Commission the rates in force to or from such office or over such route, temporarily closed, when it is reopened. Three days' previous notice of the opening and closing of any summer or season office or water route must be filed with the Commission and duly posted, in supplement to the tariff. All offices where rates are temporarily in effect shall be designated in tariffs as "summer" or "season" offices.

Filing of Tariffs—Concurrence—Authorizing an Agent to File Tariffs

13. Tariffs, classifications, and exception sheets and supplements thereto shall be filed with the Commission by proper officer of the express company or by an agent designated to perform that duty, and concurrence of every carrier amenable to the act to regulate commerce participating therein must be on file with the Commission or accompany the tariff or supplement. If an express company authorizes an agent to file its tariffs or classifications and exception sheets and supplements thereto, or certain of them, official notice of such authorization and of acceptance of responsibility by the express company for his acts, in form as hereinafter specified, must be filed with the Commission.

Authority to Agent May be Revoked or Transferred

Such notice may be revoked by an express company upon thirty days' official notice to the Commission, or at any time be transferred to another agent by filing with the Commission notice of such transfer, accompanied by full-form authorization for the newly named agent.

Authorizations for Agent and Concurrences in His Tariffs Must be on File

If two or more express companies appoint the same person as agent for the filing of tariffs or classifications and supplements thereto, each of them will be required to file with the Commission power of attorney in form prescribed appointing him their agent; and the concurrence of every other carrier amenable to the act to regulate commerce, participating in any tariff or classification or supplement thereto which is filed by him must be on file with the Commission or accompany the tariff.

Joint Agent Will Use His Own I. C. C. Serial Number

Such joint agent duly authorized to act for several express companies must file joint tariffs or classifications or exception sheets under I. C. C. serial numbers of his own.

Tariffs Issued by an Express Company Under Concurrences Will be Filed by it For All Concurring

Tariffs issued by an express company under its I. C. C. numbers may include, under proper concurrences, shown therein, rates via, and to and from points on other express companies' lines and concurring express companies may use such tariffs for posting at their offices. Such tariff must be filed by the issuing express company and such filing will constitute filing for all lawfully concurring carriers.

Send Copies of Joint Publication to Every Participant Therein

The agent or the express company that issues a joint tariff publication shall at once send copies thereof to each and every carrier that is named as party thereto.

Express Company Must Not Publish Rates Conflicting With or Duplicating Rates Published by its Agent

An express company that grants authority to an agent or to another express company to publish and file certain of its rates must not in its own publications publish rates that duplicate or conflict with those which are published by such authorized agent or other express company.

All State or Other Rates Used For Interstate Shipments Must be Posted and Filed—All Local Tariffs Should Have I. C. C. Numbers and be Posted and Filed

Rates for through shipments are often made by adding together two or more rates. All state or other rates used in combination for interstate shipments must be posted at offices and filed with the Commission, and can only be changed as to such traffic in accordance with the terms of the act. The Commission believes it proper that all local tariffs be given I. C. C. numbers and be posted and filed with the Commission in manner prescribed in the act.

Statutory Notice or Authority for Shorter Notice Must be Shown

14. The act requires that all changes in rates, or in rules that affect rates, shall be filed with the Commission at least thirty days before the date upon which they are to become effective. Manifestly it is impossible for the Commission to check the items in tariffs to determine whether or not the statutory notice has been given. The title-page of every tariff must show full thirty days' notice, or must bear a plain notation of the number and date of the permission, or the rule, or the decision of the Commission under which it is effective on less than statutory notice.

Receipt and Filing of Tariffs by Commission Does Not Relieve Express Companies From Liability for Violation of Act or Regulations Thereunder

The law affirmatively imposes upon each express company the duty of filing with the Commission all of its tariffs and amendments thereto, as prescribed in the law or in any rule relative thereto which may be announced by the Commission, under penalty for failure so to do, or for using any rate which is not contained in its lawfully published and filed tariffs. The Commission will give such consistent assistance as it can in this respect, but the fact that receipt of a tariff, or supplement to a tariff, is acknowledged by the Commission, or the fact that a tariff, or supplement to a tariff, is in the files of the Commission, will not serve or operate to excuse the express company from responsibility or liability for any violation of the law, or of any ruling lawfully made thereunder, which may have occurred in connection with the construction or filing of such tariff or supplement.

Thirty Days' Notice Required for Every Publication Filed—Tariffs Must be Delivered to Commission, Free From All Charges or Claims for Postage, the Full Time Required by Law

Thirty days' notice to the public and to the Commission is required as to every publication which it is necessary for an express company to file with the Commission, regardless of what changes may or may not be effected thereby. No tariff or supplement will be ac-

cepted for filing unless it is delivered to the Commission, free from all charges or claims for postage, the full thirty days required by law before the date upon which such tariff or supplement is stated to be effective. No consideration will be given to or for the time during which a tariff or supplement may be held by the Post-Office Department because of insufficient postage. A tariff or a supplement that is received by the Commission too late to give the Commission the full thirty days' notice required by law will be returned to sender, and correction of the neglect or omission cannot be made which takes into account any time elapsing between the date upon which such tariff or supplement was received and the date of attempted correction. In other words, when a tariff or a supplement is issued and as to which the Commission is not given the statutory notice it is as if it had not been issued, and full statutory notice must be given of any re-issue thereof. No consideration will be given to telegraphic notices in computing the thirty days' notice required. For tariffs and supplements issued on short notice under special permission of the Commission full thirty days' notice is not required, but literal compliance with the requirements for notice named in any permission granted by the Commission will be exacted and in accord with the policy and practice above outlined.

Rejected Schedules

When a schedule is rejected by the Commission as unlawful, the records so show and, therefore, such schedule should not thereafter be referred to as canceled, amended, or otherwise except to note on publication that is issued in lieu of such rejected schedule "In lieu of ——— rejected by Commission;" nor should the I. C. C. number or supplement number which it bears be again used.

Rates Prescribed in Commission's Decisions Must be Promulgated in Tariffs

Rates prescribed by the Commission in its decisions and orders after hearings upon formal complaints and accepted by defendants or affirmed by a court, shall, in every instance, be promulgated by the express companies against which such orders are entered in duly published, filed, and posted tariffs, or supplements to tariffs.

Permission for Less Than Statutory Time and Notation on Tariff

Unless otherwise specified in the order in the case, such tariff or supplement may be made effective upon five days' notice to the Commission and to the public, and if made effective on less than statutory notice, either under this rule or under special authority granted in the order in the case, shall bear on its title-page notation "In compliance with order of Interstate Commerce Commerce in case No. ———."

Circulars Announcing Compliance With Orders of Court

Circulars announcing or explaining the attitude and course of express companies under injunction of a court, relating to tariff rates or regulations, must not be issued as supplements to tariffs nor given I. C. C. numbers unless they are issued on statutory notice or under special permission from the Commission for shorter time. The Commission will, however, be pleased to have copies of such circulars and the information therein contained.

Numerical Order of I. C. C. Numbers of Tariffs, or Explanation of Missing Numbers, Required

Each express company files tariffs under I. C. C. numbers, which are presumed to be used consecutively. Occasionally a tariff or supplement is received which does not bear I. C. C. number next in numerical order to that borne by the one last filed. This is sometimes occasioned by the missing number having been assigned to a tariff that is in course of preparation. Request is made that in so far as possible express companies will file tariffs and supplements in consecutive numerical order of I. C. C. numbers. If from any cause this is not done in any instance, the tariff or supplement that is filed with an I. C. C. number that is not consecutive with the last number filed must be accompanied by a memorandum explaining as to the missing number or numbers.

Two Copies of Tariff Must be Filed

Express companies and their agents are directed, in filing schedules in compliance with the statute to transmit two (2) copies of each tariff, supplement, classification, or other schedule of rates or regulations, for the use of the Commission, both copies to be included in one package and under one letter of transmittal.

Address Tariffs to Auditor

Tariffs sent for filing must be addressed "Auditor Interstate Commerce Commission, Washington, D. C."

Issuance of Classification by Joint Agent

15. An express company may grant to a joint agent authority to publish and file for it classification and supplements thereto and exceptions to the classification; or, such exceptions may be published by the express company in its own issues, either as parts of individual tariffs or in a publication that is given an I. C. C. number, that is filed and posted as required, and that is devoted to such exceptions. Such exceptions and changes therein may be made only on statutory notice or under special permission for shorter time.

In so far as is reasonably practicable exceptions should be included in the tariff which they affect.

I. C. C. Numbers of Classification—List of Participating Express Companies—Filing Classification

A joint agent to whom express companies have extended authority under power of attorney to publish and file classification and supplements thereto must issue them under his own I. C. C. numbers, must show in the classification a list of the express companies for which he acts under power of attorney, giving as to each the EX1 number of such authority, and must file the classification and supplements thereto on behalf of all of the express companies that have so authorized him to act for them; and such express companies will not file for themselves the classification or supplements thereto. The provisions of the law as to statutory notice must be observed in the issuance of supplements or reissue of the classification.

If Express Company Does Not Authorize Agent to File Classification, it is Bound to Statutory Notice

If an express company fails to authorize an agent to file the classification for it and undertakes to file it for itself, it is bound by the terms of the law as to notice of change and date of filing, both as to the classification and each supplement thereto.

Showing Participating Express Companies in Supplements

A full list of participating express companies shall be shown in supplements.

Power of Attorney

In giving power of attorney for this purpose the form shown in Rule 16 may be modified by striking out from line 5 the word "tariffs," and, if desired, from line 6 the words "and exception sheets."

Concurrence

If an express company has given another express company concurrence EX4, under which it concurs in classification which that other express company or its agent may make and file, the express company to which that concurrence is given may exercise the authority by its lawfully appointed agent, and the express company which gave the authority be shown in the publication as participant under the form and number of its concurrence.

Form of Appointment of Agent

16. The following form, on paper 8 by 10½ inches in size, will be used in giving authority to an agent to file for the express company giving the authority tariffs and supplements thereto. Such authority must not be given to an association or bureau, and it may not contain authority to delegate to another power thereby conferred.

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of express company in full.]

(Date) ———, ———.

Form EX1—No. —.

Know all men by these presents:

That the [name of express company] has made, constituted, and appointed, and by these presents does make, constitute, and appoint [name of person appointed] its true and lawful attorney and agent for the said company and in its name, place, and stead to file tariffs, classifications, and exception sheets and supplements thereto, as required of common carriers by the act to regulate commerce and by regulations established by the Interstate Commerce Commission thereunder for the period of time, the traffic, and the territory now herein named:

And the said [name of express company] does hereby give and grant unto its said attorney and agent full power and authority to do and perform all and every act and thing above specified as fully to all intents and purposes as if the same were done and performed by the said company, hereby ratifying and confirming all that its said agent and attorney may lawfully do by virtue hereof, and assuming full responsibility for the acts and neglects of its said attorney and agent hereunder.

In witness whereof the said company has caused these presents to be signed in its name by its ——— president and to be duly attested under its corporate seal by its secretary, at ———, in the State of ———, on this ——— day of ———, in the year of our Lord nineteen hundred and ———.

THE [name of express company],
By ———,

Its ——— President.

Attest:

———,
Secretary.

[CORPORATE SEAL.]

Original Form to be Filed With Commission and Duplicate Furnished Agent

The express company issuing this form will file the original with the Commission and will furnish duplicate to the agent to whom power of attorney is given.

Concurrences Must be Given to Express Companies

For concurrence in tariffs issued and filed by another express

company or its agent forms prescribed in Rules 17 to 23, inclusive, will be used. Concurrences must be given to express companies named therein and authority so granted to an express company may be by it delegated to its lawfully appointed agent.

Size of Paper

All concurrences must be on paper 8 by 10½ inches in size.

Form of Concurrence

17. The following form will be used in giving concurrence in a tariff that is issued and filed by another express company or its agent and to which the express company giving concurrence is a party. If given to continue until revoked, it will serve as continuing concurrence in the tariff described in the concurrence and all supplements to and reissues thereof. If provision for concurrence to continue until revoked is stricken out, a new concurrence will be required with each supplement or reissue.

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of express company in full.]

(Date) ———, ———.

Form EX2—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of express company] assents to and concurs in the publication and filing of the rate schedule described below, together with supplements thereto and reissues thereof which the named issuing express company or its agent may make and file, and hereby makes itself a party thereto and bound thereby, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express company to which this concurrence is given.

Title and number: [Here give exact description of title of schedule, including number and name of series.]

Date of issue: ———, ———.

Date effective: ———, ———.

Issued by { [Official.]
[Company.]

[Name of express company.]
By [Name of officer.]

[Title of officer.]

Concurrence Accompanying Tariff

This form will be filed with the Commission by the express company or agent who files the tariff and will accompany the tariff.

Form of Concurrence

18. Concurrence may be given by any express company to embrace all tariffs issued by another express company or its agent in which the concurring express company is shown as a participating intermediate or delivering line, after the following form:

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of express company in full.]

(Date) ———, ———.

Form EX3—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of express company] assents to and concurs in the publication and filing of any rate schedule or supplement thereto which the [name of express company] or its agent may make and file, in which it is shown as a participating express company, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying via its line and to, but not from, points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express company to which this concurrence is given.

[Name of express company.]

By [Name of officer.]

[Title of officer.]

Original Form to be Filed With Commission and Duplicate Furnished Express Company

The express company issuing this form will file the original with the Commission and will furnish duplicate to the express company to which concurrence is given. This form must not be qualified in any way except to show what agents have been given power of attorney and to provide that tariffs shall not be issued under the concurrence covering traffic provided for in tariffs issued by such agents.

Form of Concurrence

19. Concurrence may be given by an express company in tariffs issued by another express company or its agent applying rates to or from its offices or via its lines, on certain described traffic or between certain described points or territories, after the following form, modified as may be necessary to confer exactly the authority intended to be granted. For granting authority to publish and file rates to and from and via its lines, and not otherwise qualified, express company will use concurrence form EX5 or EX7, as per Rules 20 and 22.

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of express company in full.]

(Date) ———, ———.

Form EX4—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of express company] assents to and concurs in the publication and filing of any rate schedule or supplement thereto which the [name of express company] or its agent may make and file and in which this company is shown as a participating express company, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying upon ———; or between ——— and ———; or from ——— to ———; or via ———; until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express company to which this concurrence is given.

[Name of express company.]

By [Name of officer.]

[Title of officer.]

**Original Form to be Filed With Commission and Duplicate Furnished
Express Company**

The express company issuing this form will file the original with the Commission and will furnish duplicate to the express company to which concurrence is given.

Form of Concurrence

20. Concurrence may be given by an express company in tariffs issued by another express company or its agent applying rates to *and from* its offices and via its lines and after the following form:

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of express company in full.]

(Date) ———, ———.

Form EX5—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of express company] assents to and concurs in the publication and filing of any rate schedule or supplement thereto which the [name of express company] or its agent may make and file, and in which this company is shown as a participating express company, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying to and from offices on its lines, and via its lines, until this au-

thority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express company to which this concurrence is given.

[Name of express company.]

By [Name of officer.]

[Title of officer.]

Original Form to be Filed With Commission and Duplicate Furnished Express Company

The express company issuing this form will file the original with the Commission and will furnish duplicate to the express company to which concurrence is given. This form must not be qualified in any way, unless to show what agents have been given powers of attorney and to provide that tariffs shall not be issued under the concurrence covering traffic provided for in tariffs issued by such agents.

Form of Concurrence

21. If two or more express companies appoint the same person as agent for the publication and filing of tariffs and supplements thereto under powers of attorney form EX1, concurrence in tariffs issued by him under such authority may be in the following form:

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of express company in full.]

(Date) ———, ———.

Form EX6—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of express company] assents to and concurs in the publication and filing of any rate schedule or supplement thereto which the [here give list of all express companies for which the agent has powers of attorney], or either or any of them, may make and file through their agent and attorney [name of agent], and in which it is shown as a participating express company, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying via its line, and to but not from points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express companies to which this concurrence is given, or of their agent and attorney herein named.

[Name of express company.]

By [Name of officer.]

[Title of officer.]

Filing

The express company issuing this form will file the original with the Commission and will furnish duplicate to each of the express companies named in the concurrence, or, if each of those express companies has given said agent power of attorney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicates to each and every express company represented by him.

Form of Concurrence

22. If two or more express companies appoint the same person as agent for the publication and filing of tariffs and supplements thereto under powers of attorney form EX1, concurrence in tariffs issued by him under such authority may be in the following form:

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of express company in full.]

(Date) ———, ———.

Form EX7—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of express company] assents to and concurs in the publication and filing of any rate schedule or supplement thereto which the [here give list of all express companies for which the agent has powers of attorney], or either or any of them may make and file through their agent and attorney [name of agent], and in which it is shown as a participating express company, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying via its line, and to and from points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express companies to which this concurrence is given, or of their agent and attorney herein named.

[Name of express company.]

By [Name of officer.]

[Title of officer.]

Filing

The express company issuing this form will file the original with the Commission and will furnish duplicate to each of the express companies named in the concurrence, or, if each of those express companies has given said agent power of attorney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicates to each and every express company represented by him.

Form of Concurrence

23. If two or more express companies appoint the same person as agent for the publication and filing of tariffs and supplements thereto under powers of attorney form EX1, concurrence in tariffs issued by him under such authority applying to or from certain points or territory may be issued in the following form, modified as may be necessary to confer exactly the authority intended to be granted:

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION

[Name of express company in full.]

(Date) ———, ———.

Form EX8—No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

This is to certify that the [name of express company] assents to and concurs in the publication and filing of any rate schedule or supplement thereto which the [here give list of all express companies for which the agent has powers of attorney], or either or any of them, may make and file through their agent and attorney [name of agent], and in which it is shown as a participating express company, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying upon ———; or between ——— and ———; or from ——— to ———; or from ——— to points on or reached via its line; or from points on or via its line to ——— until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express companies to which this concurrence is given, or of their agent and attorney herein named.

[Name of express company.]

By [Name of officer.]

[Title of officer.]

Filing

The express company issuing this form will file the original with the Commission and will furnish duplicate to each of the express companies named in the concurrence, or, if each of those express companies has given said agent power of attorney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicate to each and every express company represented by him.

NOTE.—Concurrence, form EX2, applies to individual publication named therein. Concurrence, form EX3 or EX6, confers authority to publish and file rates to, but not from, offices on line of concurring express company, and via its lines. Concurrence, form EX5 or EX7, confers authority to publish and file rates to and from offices on line of concurring express company, and via its lines.

Forms EX3, EX5, EX6, and EX7 are not to be modified except as specified in the rules. The use of these several forms as provided will therefore show by the form number just what authority has been given, except when form EX4 or EX8 is used, these forms being provided for instances which the other forms do not exactly fit.

Numbers of Concurrences and Authorizations

24. Each express company will give authorizations and concurrences serial numbers, beginning with No. 1 in each series, as indicated by forms, and continuing in consecutive numbers as to each series, and keeping these numbers separate and apart from the I. C. C. numbers of tariffs.

Printing and Use of Authorizations and Concurrences

It is suggested that for convenience in reference and filing the powers of attorney and concurrences be printed in triplicate, consisting of a "stub," to be retained by issuing express company, an "original," to be filed with the Commission, and a "duplicate," to be furnished to the agent to whom power of attorney is given, or the express company to which concurrence is given.

Revocation Effective

Notice of revocation of a concurrence will become effective forty days from the date upon which such notice is filed with the Commission and served upon the express company to which such concurrence was given.

Conflicting Authority to be Avoided

In giving concurrences care must be taken to avoid probability of two or more agents or express companies naming conflicting rates or rules.

Express Company Issuing Authority or Concurrence is Not Relieved From Duty of Posting Tariffs

The granting of authority to issue tariffs under power of attorney, or concurrence, does not relieve the express company conferring the authority from the necessity of complying with the law with regard to posting tariffs. It may use tariffs issued under its authority for that purpose.

Letter of Transmittal

25. All tariffs that are filed with the Commission will be accompanied by a letter of transmittal, on paper 8 by 10½ inches in size, and to the following effect:

[Name of express company in full.]

(Date) ———, ———.

Advice No. —.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

Accompanying schedule is sent you for filing, in compliance with the requirements of the act to regulate commerce, issued by ——— Express Company, and bearing

I. C. C. No. —.

Supp. No. —, to I. C. C. No. —.

Effective ———, 190—;

and is concurred in by all express companies named therein as participants, under continuing concurrences or authorizations now on file with the Interstate Commerce Commission, except the following-named express companies, whose concurrences are attached hereto:

(Signature of filing agent.)

A separate letter may accompany each schedule, or the form may be modified to provide for filing under one letter as many schedules as can conveniently be entered.

NOTE.—If receipt for accompanying schedule is desired, the letter of transmittal must be sent in duplicate, and one copy will be stamped and returned as receipt.

ADMINISTRATIVE RULINGS AND OPINIONS

[Matter not applicable to express companies has been omitted.]

Changes in Rates

26. Section 6 of the act as amended June 29, 1906, provides that—

“No change shall be made in the rates, fares, and charges, or joint rates, fares, and charges, which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days’ notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule *then in force* and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by *printing new schedules*, or shall be plainly indicated *upon the schedules* in force at the time and kept open to public inspection.”

Rate Changes Filed and Published Must Become Effective—Rates in Force Can Only be Changed on Thirty Days’ Notice

This provision plainly refers to rates which have already become effective, and also applies the term “proposed changes” to rates which have not become effective. It follows that after notice of a change in rates has been filed and published the new rates must be allowed to go into effect, and cannot be withdrawn, canceled, or superseded except upon notice filed and published for at least thirty days after the date when the rates have become effective. A tariff may contain a notation that rates therein stated will expire upon a date therein specified which is at least thirty days subsequent to the date on which such rates become legally effective, and this will be legal notice of the cancellation or withdrawal of such rates.

For Good Cause, Commission May Allow Exceptions

Express companies must comply fully with the requirements of the law respecting the filing, publication, and taking effect of proposed rates, unless upon application and for good cause shown the Commission, in the exercise of authority conferred upon it, shall allow rates to be changed or withdrawn upon less than thirty days’ notice, or by formal order otherwise modify such requirements. No regulation or rule of the Commission is authority to change rates or issue tariffs on less than statutory notice unless so specifically provided in the rule or regulation.

Joint Rate Greater or Less Than Sum of Locals

27. Two or more connecting express companies may establish a joint rate only upon notice of thirty days or under special permission; provided, that until otherwise ordered by the Commission express companies may establish on one day's notice to the Commission and to the public, tariffs or tariff supplements naming joint rates over the lines of two or more express companies between points as to which no joint rates are in effect via their lines, provided that such joint rates, so established, do not in any way, manner, or extent, increase the rates or charges demanded from shippers. Tariffs or tariff supplements issued under this rule must bear notation: "Issued by authority of Rule 27, Interstate Commerce Commission's Tariff Circular No. 16-A." A joint rate when duly established and in force becomes the only lawful rate for through transportation.

A through rate from point of origin to destination of a shipment is the lawful rate applicable to that movement, whether the rate be confined to the line of one express company or be a joint rate applying over the lines of two or more express companies.

Reduction of Joint Rate to Equal Sum of Locals

28. When a joint rate is in effect by a given route between any points which is higher than the sum of the locals between the same points, by the same or another route, and such joint rate has been in effect thirty days or longer, such higher joint rate may, until further notice from the Commission, be changed by reducing the same to the sum of such locals, but not otherwise, upon posting and filing with the Commission one day in advance *a supplement to the tariff in which the joint rate so reduced appears*, which supplement shall show the reduced rate; shall bear notation that it is effective on less than statutory notice "by authority of Rule 28, Interstate Commerce Commission's Tariff Circular No. 16-A;" shall show on title-page, or in connection with such item, by identifying references and I. C. C. numbers, the tariffs that contain the locals which make up the new joint rate.

Through Rate Higher Than Sum of Locals Prima Facie Unreasonable

Many informal complaints are received in connection with regularly established through rates which are in excess of the sum of the locals between the same points. The Commission has no authority to change or fix a rate except after full hearing upon formal complaint. It is believed to be proper for the Commission to say that if called upon to formally pass upon a case of this nature it would be its policy to consider the through rate which is higher than the sum of the locals between the same points as prima facie unreasonable and that the burden of proof would be upon the express company to defend such higher through rate.

New Offices

29. An express company may establish, in the first instance, rates to or from newly opened offices of such company upon one day's notice to the Commission and the public. Statutory notice will be required as to all changes in, or additions to, the rates so filed in the first instance. Such tariffs must bear notation that they apply to newly opened offices to or from which no rates are in effect, and bear the notation: "Issued by authority of Rule 29, Interstate Commerce Commission's Tariff Circular No. 16-A."

Rates on Carload Shipments Between Points as to Which no Carload Rates are in Effect

30. Express companies may establish upon one day's notice to the Commission, and to the public, tariffs or supplements naming rates for carload shipments between points as to which no carload rates are in effect via their lines. Each tariff or supplement containing rates established under this permission must bear notation: "Issued by authority of Rule 30, Interstate Commerce Commission's Tariff Circular No. 16-A."

Requests For Permission to Amend Tariffs on Less Than Statutory Notice

31. The act authorizes the Commission, in its discretion and for good cause shown, to permit changes in tariff rates on less than the statutory notice. This authority should be exercised only in instances where special or peculiar circumstances or conditions fully justify it. Confusion and complication must follow indiscriminate exercise of this authority. Applications for permission to change tariffs on short notice are received in indefinite and informal ways and over the signatures of many different officials. Some telegraphic requests are received which make no mention of verified copies and which are not followed by verified copies, as per rule previously made by the Commission. The Commission therefore announces that applications for permission to change tariffs on less than statutory notice shall be addressed to the Interstate Commerce Commission, in form specified by the Commission under date of September 17, 1906, or such amended form as may be prescribed by the Commission, and must be over signature of a general officer of the company, specifying title.

The Commission requests that as far as possible these applications be sent by mail and not by telegraph. Action will be taken only on receipt of the verified application.

Desire to meet the rates of a competing express company which has given the full statutory notice of change in rates will not of itself be regarded as good cause for allowing changes in rates on a notice of less than thirty days.

Permission to Change Rates on Short Notice Limited to Emergency or Necessity

This authority will be exercised only in cases where actual emergency and real merit are shown. Clerical or typographical errors in tariffs constitute good cause for the exercise of this authority, but every application based thereon must plainly specify the omissions or mistakes and be presented with reasonable promptness after issuance of the defective tariff.

Amendment of Joint Tariffs on Less Than Statutory Notice

A request from one party to a joint tariff for permission to amend such tariff on less than statutory notice necessarily raises some question of doubt as to the wishes or concurrence of other interested parties to the tariff. It is desirable and proper that any such permission given by the Commission should affect alike all parties to the tariff that is to be amended under it. The Commission therefore decides:

Applications by Express Company or Agent Authorized to File the Tariff

That when an express company gives an agent authority to file tariff or tariffs and supplements thereto in its name, place, and stead, or concurrence in tariff or tariffs and supplements thereto which another express company or its agent may file thereunder, the agent or express company to whom such authority or concurrence is given has, under the terms of the authority or concurrence, the power and the right to request, in the name and on behalf of the express companies participating in such tariff or tariffs, permission to amend same on less than statutory notice.

Request Must Come From One Who Issues the Tariff

Such requests as to joint tariffs must be made by the agent or the express company that is authorized to file the tariff and in making them form same as that prescribed for use of individual carrier shall be used, except that the request must state that it is made in the name and on behalf of all parties to the tariff, and that formal authority to file the tariff, or formal concurrence in the tariff, is on file with the Commission from each of them.

Concurring Express Companies Bound by Act of Authorized Agent

Request will be signed and verified by the agent or officer who makes it, and every express company that has, by formal authority or concurrence, made itself a party to such tariff will be held bound by the act of its agent under such authority or by its concurrence. This rule will, in so far as is possible, be applied to tariffs now on file, and will be effective in all cases from and after August 1, 1908.

Division of Joint Rates—Contracts and Agreements for Must Be Filed

32. A contract, agreement, or arrangement between express companies governing the division between them of joint rates on interstate business is a contract, agreement, or arrangement in relation to traffic within the meaning of section 6 of the act to regulate commerce, and a copy thereof must be filed with the Commission. Where such contract, agreement, or arrangement is verbal or is contained in correspondence between the parties or rests on their custom and practice, a memorandum of its terms must be filed with the Commission.

Diverting Traffic Because of Blockades

33. Whenever, by reason of blockade upon the line of an express company resulting from storm, washout, wreck, or similar casualty, it becomes necessary for it to divert to the line of another express company traffic that is in transit, the express company so diverting its business should pay the express company or companies upon whose line such traffic is carried regular tariff rates from and to the points between which it or they transport such diverted traffic, except that if the express company accepting such diverted traffic is participant in a joint tariff in which the diverting line is also a participant and under which the diverted traffic is being moved, settlement may be made on basis of the division of the through joint rate.

This rule does not apply in cases of congested lines due to heavy traffic or ordinary causes.

Free Transportation of Passengers in Connection With Shipments of Property

34. Section 1 of the act provides that free transportation may be furnished "to necessary caretakers of live stock, poultry, and fruit." This provision in the statute is construed to mean necessary caretakers of live stock, poultry, or fruit that is loaded and ready for movement, or the movement of which is actually contracted for or that is actually in transit. This transportation must be the same for all under like circumstances and must be published in the tariff governing transportation of the commodity. Tariff may provide that caretaker sent out to return with shipment that is arranged for or that is in transit will be required to pay fare going and that such fare will be refunded if person so sent does return as actual caretaker of shipment for which he is sent.

The Commission is of the opinion that the term "fruit" in this connection includes perishable vegetables when shipped under conditions that render caretakers "necessary."

Transportation for Government

35. Section 22 of the act authorizes carriers to grant free or reduced rate transportation of property for the United States, state,

or municipal governments, or for charitable purposes or for exhibition at fairs and expositions. This special provision and the words "reduced rates" are construed to be special authority for carriers to depart from established tariff rates; and for such transportation of property as is provided for in said section 22 it is not necessary for carriers to provide tariffs or observe tariff rates and regulations.

Reduction May Not be Made Through a Third Party

Reduced rates may be granted to the United States, state, or municipal governments only in instances in which the transaction is directly between the carrier and such government, and may not include those in which a contractor or other third person or party is interested.

Payment for Transportation

36. Nothing but money can be lawfully received or accepted in payment for transportation subject to the act, whether of passengers or property, or for any service in connection therewith, it being the opinion of the Commission that the prohibition against charging or collecting a greater or less or different compensation than the established rates in effect at the time precludes the acceptance of services, property, or other payment in lieu of the amount of money specified in the published schedules.

The law makes it clear that no carrier can lawfully apply to transportation over its lines any rate or charge that is not plainly stated in its own tariffs at that time.

Routing and Misrouting

37. Neglects or errors on part of agents of express companies resulting in misrouting shipments lead to claims of overcharge. No express company can lawfully refund any part of the lawful charge except under authority so to do from the Commission or from a court of competent jurisdiction.

An express company may not disregard the instructions of shippers as to intermediate routing, except when tariff of initial lines reserves to it the right to dictate intermediate routing. If the express company is not willing to observe the intermediate routing instructions of shipper it must not execute bill of lading containing such routing. Express companies will be held responsible for routing shown in the bill of lading.

Refund of Overcharge Caused by Misrouting Through Error of Express Company's Agent

If an express company's agent misroutes a shipment and thus causes extra expense to the shipper over and above the lawful charges via another available route over which such agent had applicable rates which he could lawfully use, and responsibility for

agent's error is admitted by the express company, such express company may adjust the overcharge so caused by refunding to shipper the difference between the lawful charges via the route over which shipment moves and what would have been the lawful charges on same shipment at the same time via the cheaper available route which could have been lawfully used. Such refund must in no case exceed the actual difference between the lawful charges via the different routes as specified, and must in every instance be paid in full by the express company whose agent caused such overcharge and must not be shared in by or divided with any other express company, corporation, firm, or person. This authority is limited strictly to the cases specified and to the circumstances recited and does not extend or apply to instances in which agents of express companies induce shippers to route shipments over a particular line via which a higher rate obtains than is effective via some other line.

Complete distinction must be observed between cases to which this rule applies and those provided for under Rule 40.

Co-operation by and Responsibility of Shippers and Consignees

Shippers must bear in mind that there is a limit beyond which an agent of an express company could not reasonably be expected to know as to terminal delivery or local rates at distant points and on lines of distant companies to or with which he has no specific joint rates. Consignors and consignees should co-operate with agents of express companies in avoiding misunderstandings and errors in routing and must expect to bear some responsibility in connection therewith.

Maximum Rates not Specific Rates

38. Rule 4 prohibits including in a tariff any rule or regulation which in any way or in any terms authorizes substituting for any rate named in the tariff a rate found in any other tariff or made up on any combination or plan other than that clearly stated in specific terms in the tariff of which the rule or regulation is a part. This rule is intended to bring about entire discontinuance of tariff rules which provide that rates named in tariff will apply to certain points "as maxima," or that if a combination on some gateway or basing point makes less than the rates named in tariff such combination will apply, or for equalizing or protecting any rate via another line or route or gateway, etc. The intent is that as rapidly as tariffs can be reconstructed in accordance with the regulations issued by the Commission they will state in specific, clear, and unambiguous terms the rates and their application.

Combinations of Lawfully Published Bases of Rates Instead of Maximum Rates

The Commission decides that, pending the complete elimination of such rules, a rate that is stated in a tariff as applicable to a certain

point as a maximum is not a specific through rate to that point, and that a rate made up on combination of lawfully filed tariffs may be used in preference to such maximum rate if there is no applicable rate via the route over which shipment moves, other than the one made by such maximum rule. In every instance where there is a *specific* joint through rate from point of origin to point of destination it must be applied to through shipments regardless of possible lower combinations. (See Rule 27.)

Carriers May Not Be Given Preferential Rates

39. In answer to inquiries the Commission expresses the opinion that under the law an express company, or a person or corporation operating a railroad or other transportation line, cannot, as a shipper over the lines of another express company or carrier, be given any preference in the application of tariff rates on interstate shipments, but it may lawfully and properly take advantage of legal tariff joint rates applying to a convenient junction or other point on its own line, provided such shipments are consigned through to such point from point of origin and are in good faith sent to such billed destination. In other words, one express company shipping its fuel, material, or other supplies over the lines of another express company or carrier must pay the legal tariff rates applicable to the same commodities shipped by an individual.

Where stock in one carrier company is owned by another carrier company, but both maintain separate organizations and report separately to the Commission, they may not lawfully carry property free for each other.

Return of Astray Shipments

40. Instances occur in which, through error or oversight on the part of some agent or employee, a shipment is billed to an erroneous destination or is unloaded short of destination or is carried by. The Commission is of the opinion that in bona fide instances of this kind express companies may return such astray shipments to their proper destination or course without the assessment of additional charges, and may arrange for such movement of such astray shipments for each other on mutually acceptable terms without the necessity of publishing, posting, and filing tariff under which it will be done.

Complete distinction must be observed between cases to which this rule applies and those provided for under Rule 37.

Movement of Shipments Refused by Consignees or Damaged in Transit

41. In one form or another express companies provide for the return free or at reduced rates or the reconsignment under through rate from point of origin of shipments that are damaged in transit or are refused by consignees. In a nondiscriminatory way and within reasonable limits such rule is not unlawful or improper. Care

should be taken to preserve the distinction between shipments in which the express company has no interest except the collection of the transportation charges and which are reconsigned or returned purely out of consideration for the interests of the owner of the shipment and shipments which, because of injury or damage in transit, are left on the express company's hands and in which it has an interest to the extent of the transportation charges and the value of the shipment.

Shipments Refused by Consignee

A rule providing that shipments which are refused by consignee may be reconsigned and forwarded, under application of through rate from point of origin to final destination, either with or without the exaction of a reconsignment charge, is permissible. Such rule should provide that if reconsigned to a point beyond which takes a lower rate from point of origin the rate to first destination will be charged, and should also require satisfactory showing of actual refusal by consignee and of a genuine transaction in good faith.

Shipments Damaged in Transit

A rule providing for the reconsignment or return free or at reduced rate of articles damaged in transit is not deemed improper if it is so framed and applied as to prevent abuse or improper practices under it. As to shipments that are not in closed packages, and thus are open to immediate inspection, the rule should provide that in order to claim return under this rule the goods shall not have left the possession of the express company before such claim is made. As to goods that are in closed packages it is believed that the rule should provide that they must be returned to the express company within ten days.

Such rules must be in tariffs and must be applied without discrimination and should provide that rule for return of shipments applies only via the lines over which the shipment moved.

Where a shipment is refused and is left on the hands of the express company it is believed that the express company, when it recognizes its responsibility for the value of the shipment and the transportation charges on same, may haul it for itself to such point on its own lines as offers the best opportunities or facilities for disposing of it to advantage, just as it may haul property of its own.

Distribution of Official Circulars and Rulings

42. It is obviously impracticable for the Commission to place copies of its official circulars and rulings in the hands of all the officers of express companies or to furnish copies for distribution among them. The officers at the head of traffic departments will please designate for each line an officer to whom such circulars and rulings are to be sent, and arrange for such designated official to disseminate the information among other interested officers and agents.

Please report these appointments to the Commission as early as possible.

Special Reparation on Informal Complaints

43. To assist in the settlement of certain claims of shippers against express companies and as a practical means of disposing with promptness of informal complaints that might otherwise develop into formal complaints, and in connection with which the unreasonableness of the rate or regulation is admitted by the interested express company or companies, the Commission on full information will authorize adjustment by special order if all of the facts and conditions warrant such action. The connections in which the Commission has authority to modify the provisions of the law are specified in the Act. The Commission will not assume to modify it in any other connections or features.

Must Present Plain Case

The instances in which the Commission will authorize refund or reparation on informal complaint and in an informal way will be confined to those in which the informal showing develops plainly a case in which the Commission would award reparation on formal hearing and in which an adjustment agreeable to complainant and express company or companies and in conformity with the provisions of the law is reached.

Must Admit Unreasonable Charge

Reparation involving refund of alleged overcharges in instances in which the lawful tariff rates have been applied will be authorized under informal proceedings, only when the express company admits the unreasonableness of the rate charged and it is shown that within a reasonable time, not exceeding six months, after the shipment moved it has incorporated in its own tariffs, or in tariffs in which it has concurred, the rate upon basis of which adjustment is sought, and has thus made that rate lawfully applicable via the route over which shipment in question moved. Adjustment of a claim of this character that is filed with the Commission within six months after the shipment moved may, however, be authorized even if more than six months have elapsed between the movement of the shipment and the effective date of tariff rate or regulation that forms the basis of such adjustment. Authority for refund on account of a reduced rate or changed tariff regulation will also contain Commission's order requiring the maintenance of such rate or regulation for at least one year.

Express Company Must Have Authority

No express company may pay any refund from its published tariff charges save with the specific authority of the Commission in

accordance with the provisions of the Act. When an informal or formal reparation order has been made by the Commission the principle upon which it is based shall be extended to all like shipments, but no refunds shall be made upon such like shipments except upon specific authority from the Commission therefor.

Pay Charges Demanded by Express Company

The shipper should pay the lawfully published charges applicable via the route over which the shipment moves, and make claim for refund if he believes he has been overcharged.

If an express company desires to give its patrons the benefit of the same rate that applies via another line or gateway, and which is lower than its own rate, it can do so by lawfully incorporating that rate in its own tariffs, and so give the benefit of it to all of its patrons alike. The law forbids giving such lower rate to one and withholding it from another, but neither the law nor the Commission stands in the way of adoption in lawful manner of the lower rate as available for all.

The Commission's power to authorize adjustments will not be exercised in such way as to create the very discriminations which the law aims to prevent. No doubt instances will occur in which seeming hardship will come to some. Much of such embarrassment will be avoided if agents of express companies and shippers take pains to be certain that correct rates are quoted and correct routing is given.

Statute of Limitation

Claims must have accrued within two years immediately prior to the date upon which they are filed; otherwise they are barred by the statute. The Commission will not take jurisdiction of or recognize its jurisdiction over any claim for reparation or damages which is barred by the statute of limitation, as herein interpreted, and the Commission will not recognize the right of a carrier to waive the limitation provisions of the statute.

Responsibilities of Carriers Under Tariffs

44. In the past no uniform or definite practice or rule has been followed by express companies in regard to concurrence in joint tariffs.

To now undertake to check out and follow down definite and actual concurrence of express companies in tariffs, issued prior to effective date of these regulations, would be a difficult task; and to declare unlawful all tariffs, and participation therein, which were not definitely and actually concurred in, other than by use thereof, would be to overthrow practically all such joint tariffs and leave transportation in chaos.

Express Companies are Responsible Under Tariffs, Except When and After they Filed Specific Notice of Nonconcurrence

The Commission cannot undertake to now excuse express companies from responsibilities placed upon them by tariffs that have been issued, and in which they are named as participants, except in accordance with and subsequent to filing of specific notices of nonconcurrence.

These regulations require that the express company or agent that issues a joint tariff shall, before issuing same, secure the definite and affirmative concurrence of every carrier shown therein as a participant, and shall show in connection with the name of each participating carrier the form and number of the instrument by authority of which that carrier is made a party to the tariff.

Express Company Not Bound by Being Named as Participant in Tariff Without Its Authority

An express company has no means of preventing another express company from naming it as party to a joint tariff without proper authority so to do. It cannot, however, be bound by such unauthorized act, and it is its obvious duty to refuse to recognize or apply any such unlawful issue. It should also at once call attention of the Commission and of the one that issued the tariff to such erroneous action.

Tariff Lawful as to Carriers Shown as Participants Under Lawful Authorizations and Unlawful as to Carriers Named as Participants Without Lawful Authorities

If one or more carriers are, without proper authority, so shown as participating in any tariff and other carriers are lawfully shown as parties thereto, the use of the publication is unlawful as to the carriers that are named as parties thereto without proper authority and lawful as to those that are parties to it under proper authority. The carrier over whose line shipments are sent under a joint tariff is bound by the terms of that tariff if it has lawfully concurred therein, and, if it has not lawfully concurred therein, may not accept earnings in accordance therewith, but must demand for the service performed its lawful earnings according to its lawful tariffs.

Responsibility for Unlawful Incorporation of a Carrier in a Tariff

Responsibility for the unlawful incorporation of any carrier in a tariff will rest upon the express company that issued the tariff, or, if the tariff is issued by a joint agent and attorney for two or more express companies, will rest upon that one of his principals that accepts and forwards the business under that tariff.

Policy of Commission on Complaints

In passing upon a complaint of overcharge growing out of im-

proper or unlawful inclusion of any carrier's name in the list of participating carriers in the tariff under which the business was accepted and forwarded the Commission will apply the principles above stated.

Withdrawal of Filed Tariffs not Permitted

45. Not infrequently the Commission is requested to return to carriers tariff publications which have been received and filed by the Commission in the ordinary course of business. Such requests are usually based on the desire to substitute some corrected or changed publication for the one that has been filed. Manifestly it would be improper for the Commission to permit such substitutions or to surrender any tariff publication duly and properly received and filed by it, unless such surrender is caused by rejection of such publication by the Commission because of illegality or irregularity in connection therewith. To surrender publications duly filed and permit the substitution of others would involve a species of falsification of the records which could not be permitted.

Ocean Carriers—Export and Import Tariffs

46. Ocean carriers between ports of the United States and foreign countries *not adjacent* are not subject to the terms of the act to regulate commerce; nor to the jurisdiction of the Commission.

Export and Import Tariffs

The inland carriers of traffic exported to or imported from a foreign country not adjacent, must publish their rates to the ports and from the ports, and such rates must be the same for all regardless of what ocean carrier may be designated by the shipper.

Through Rates May be Shown

As a matter of convenience to the public they may publish in their tariffs such through export or import rates to or from foreign points as they may make in connection with ocean carriers. Such tariffs must, however, distinctly state the inland rate as above provided; and need not be concurred in by the ocean carrier, because, concurrence can be required from, and is effective against, only carriers subject to the act.

Must be Filed and Posted

Whichever plan of publishing these rates is followed the tariffs must be filed and posted, and may be changed only upon statutory notice or under special permission for shorter time.

Through Export and Import Billing

Export and import traffic may be forwarded under through bill-

ing, but such through billing must clearly separate the liability of the inland carrier or carriers and of the ocean carrier, and must show the tariff rate of the inland carrier or carriers.

N. B. In the case of *Kindel v. Adams Ex. Co., U. S. Ex. Co., Pacific Ex. Co. and American Ex. Co.*, 13 I. C. C. 475, the Commission has considered certain questions of competition with the United States mail, "base" rates and "graduate" scale and the reasonableness of rates. Also competition with freight rates, and expedition of the service; capitalization of and investments in the business; the comparison of rates, and how the rates are constructed and the postal regulations of England.

CHAPTER XVI

In the Matter of Legal Rates—The Duty of Carriers and Shippers to Observe Tariffs. Relief Under the Act to Regulate Commerce.

Memorandum by Commissioner Lane

The Commission is in receipt of a number of petitions from carriers subject to the act to regulate commerce, in which permission is requested to accept, receive, or quote rates or charges other than those filed and published in accordance with law. An equally large volume of informal complaints have been received from shippers, in which protest is made against the payment of the legally established rates because other and different rates have been quoted by the agents of carriers or appear upon the shipper's bill of lading.

To such petitions and complaints the law itself gives conclusive answer. The Commission is entirely without jurisdiction or power to modify, affect, or alter the published tariffs of the carriers save in the manner fixed and prescribed by the act itself; and it can neither sanction, approve, or validate any departure from such tariffs. It is the policy of the law to permit carriers themselves to initiate schedules of freight and passenger rates without securing the preliminary sanction or approval of the Commission, and carriers must abide by such rates when duly filed and published with the Commission. They cannot, either by publication of such a rule in their tariffs or by contract with shippers or otherwise, agree to "protect" their own rate against a lower rate made by a competing line, nor is it within the law for any carrier to ask or accept any less than the published rate for the service rendered via the line or route over which the business moves. These are the words of the law:

" . . . nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs." (Sec. 6.)

The above quotation is from the Hepburn Act, but in the Elkins Act this further provision is to be found:

“ . . . and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said act to regulate commerce and the acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall, knowingly, offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars.”

“ . . . Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the act to regulate commerce or acts amendatory thereof, or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under this act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this act.” (Sec. 1.)

These broad, inclusive, and mandatory provisions of law are subject to neither abrogation nor modification at the hands of the Commission. It is nowhere said in the act to regulate commerce that this Commission may set aside or in the slightest disregard the unqualified language of the act. The prohibition, it is to be noticed, is not restricted to carriers—the shipper may not solicit or accept any other than the schedule rate. And the penalties imposed are made equally severe upon both carrier and shipper. It is further to be regarded that under the Elkins Act the corporation is made responsible for the acts of its agent, and the corporation is declared guilty of a misdemeanor if it “offers” to depart from the published rate.

The theory of the common law permitted carriers to make private contracts for transportation, which contracts were evidenced by bills of lading given to the shippers. Under this practice charges might vary as between shippers, and the fullest freedom was permitted to “trade” in transportation. The abuses arising under such conditions led to the enactment of the act to regulate commerce. Thenceforth the rates to be charged for transportation were removed from the field of barter and became matters of legal regulation. The bill of lading became at once little more than a receipt for the goods to be transported, into which could be legally incorporated nothing obnoxious to the law. It was therefore placed beyond the power of the agent of a corporation carrier, or of any other officer thereof, to bind the carrier to any rate other than that applicable, under the filed tariffs, to the traffic accepted for transportation. And this is necessarily so, else the purpose of the

law could be set aside at will by any agent who might choose to favor or to injure a shipper. As it is no longer within the prerogative of the freight agent to agree to give a rate, he does not add the slightest validity or sacredness whatever to his quotation of a rate by writing the same in a bill of lading. The shipper obtains transportation by right of law, and the rate charged is not the result of contract, but is fixed and determined under a required legal form.

In support of this view we find that the decisions are imperative that every carrier, subject to the act to regulate commerce, must charge the rate shown in its published tariffs, even though (1) a different rate be shown in the bill of lading, or (2) a different rate be quoted to the shipper by the agent of the railroad, or (3) a different rate be agreed to by both carrier and shipper in a written contract, or (4) a different rate be declared by the courts to be the reasonable rate.

(1) In *Gulf, Colorado &c. v. Hefley*, 158 U. S. 98, the Supreme Court of the United States decided that on an interstate shipment the carrier must collect the rate named in its regularly published tariff, even though the lower rate had been named in the bill of lading. This case arose in Texas, in which State a statute made it unlawful for a railroad company in that State to charge a greater sum for transportation of freight than the sum specified in the bill of lading. The Supreme Court held that under the act to regulate commerce the published tariff must be observed, and that the Texas statute must give way as to all interstate shipments.

(2) In *Texas & Pacific v. Mugg*, 202 U. S. 242, the Supreme Court reaffirmed the decision in the Hefley case and applied it to a case in which the agent of the railroad at the point of shipment had quoted to the shipper a lower rate than the one set forth in the published tariffs. It was again decided that the incorrect quotation did not serve to vary the published tariff or to give the shipper a right to forward goods at the lower rate.

(3) In *Armour Packing Company v. United States*, 153 Fed. R. 1, it was expressly held that a written contract for a rate lower than the published tariff could not be observed by the parties without making them criminally liable for breach of the act to regulate commerce. This case is made the stronger by the fact that the contract was legal at the time it was made, the rate named in it being according to the then legally published tariffs of the carrier. These tariffs were afterwards amended by the carrier, and an increased rate named. The court held that the amendment to the tariff would supersede the contract, and heavily fined the shipper who shipped under the contract after the tariffs had been amended.

(4) In *Texas & Pacific v. Abilene Cotton Oil Company*, 204 U. S. 426, decided by the Supreme Court of the United States in February, 1907, it was held that even the fact that the rate named in the published tariff is unreasonable in amount, and has been so declared by a court, will not justify the carrier in paying or the shipper in receiving a refund or reduction from such rate. As in the other cases

cited above, the court held that the published rate must be enforced upon all alike until it has been changed in the manner provided by the act to regulate commerce, and that proceedings to have a published rate declared unreasonable in amount must be brought in the first instance before the Interstate Commerce Commission.

It thus appears that the rates named in published tariffs may not, so far as interstate shipments are concerned, be varied by any arrangement between shippers and carriers, whether oral or written, or by state legislation or by court proceedings, except as such proceedings may be necessary under the act after an order has been made by this Commission. It may be added that if the Commission were to undertake to authorize departure from published rates such authorization would in no wise protect either the shippers or the carriers depending upon the same, because such authorization would be outside of any powers given the Commission by the act to regulate commerce.

The shipper is not, however, without remedy for the exaction of an excessive, unreasonable, or discriminatory rate. The act to regulate commerce provides a simple procedure by which, through the Interstate Commerce Commission and not otherwise (*Abilene Oil case, supra*), reparation may be obtained for any such illegal charge. The Commission may not waive a rate or set any part of it aside as matter of discretion, but if a shipper has been charged an unreasonable or unjust rate he may make informal complaint to the Commission, setting forth all the pertinent facts relating to the shipment, which will be referred to the railroad complained of, as the law requires. (Sec. 13.)

Should such railroad confess the truth of the complaint and put into effect a lower rate, the Commission will at once order reparation to the shipper in the amount of the difference between the rate charged to the shipper and the new rate established by the carrier. Should the carrier contest the contention of the shipper, the latter will be called upon to file a formal complaint, upon which the Commission will, after answer is filed, give a full hearing, and if the rate charged to the shipper is found to be unreasonable or unjust the Commission will order reparation to the complainant and order a reduction of the rate. This power is exercised under sections 15 and 16 of the act, which reads, in part, as follows:

Sec. 15. That the Commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint made as provided in section thirteen of this act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates or charges whatsoever, demanded, charged, or collected by any common carrier or carriers, subject to the provisions of this act, for the transportation of persons or property as defined in the first section of this act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates, are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this act, to determine and prescribe what will be the just and reasonable

rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged. . . .

Sec. 16. That if, after hearing on a complaint made as provided in section thirteen of this act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this act for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named. . . .

The power so vested in the Commission can be exercised only in accordance with the procedure prescribed, and can be used only as to matters over which the Commission has been given jurisdiction. Appeals for relief from the effect of tariff rates, regulations, or privileges, cannot be entertained save as to matters over which the Commission has such jurisdiction under the law that it may upon formal complaint grant the relief requested.

CHAPTER XVII

IN RE INVESTIGATIONS BY THE COMMISSION

The following subjects have been considered by the Commission, upon its own motion, under authority conferred by sections 12 and 13:

- Express business, 1 I. C. C. 349.
- Passenger tariffs and rate wars, 2 I. C. C. 513.
- Export rates by southern and southwestern railway carriers, 8 I. C. C. 185.
- Passenger tariffs, 2 I. C. C. 649.
- Commissions on the sale of tickets, Docket No. 192.
- Trackage and car mileage, Docket No. 193.
- Rates on food products from western points to the seaboard, under an order of the Senate, 4 I. C. C. 48, 116.
- Transportation of flour from Minneapolis, Minn., and common points to the Atlantic seaports and intermediate points, Docket No. 526.
- Filing and publication of rate schedules by the New York and Texas Steamship Co., Docket No. 564.
- Underbilling and misrepresentation of freight, 1 I. C. C. 633.
- Transportation of coal from West Virginia mines to Chicago, Docket No. 594.
- Transportation of dressed meats and packing-house products, Docket No. 599.
- Consolidations and combinations of carriers and "Community of interests" plan, Docket No. 608.
- Transportation of immigrants, 10 I. C. C. 13.
- Alleged unlawful rates and practices in the transportation of coal and other commodities between points north of the Ohio River and east of the Missouri and Mississippi, Docket No. 631.
- Proposed advances in freight rates, 9 I. C. C. 382.
- Import rates, 4 I. C. C. 447.
- Rates, facilities and practices applied in the transportation, handling and storage of grain carried from points in Missouri, Kansas, Nebraska, Oklahoma and Indian Territory to points in Texas,

- Docket No. 697; and from points in Kansas to points in other States, Docket No. 719; 11 I. C. C. 220, 238.
- Publication and filing of tariffs on export and import traffic, 10 I. C. C. 55.
- Differential freight rates to and from North Atlantic ports, 11 I. C. C. 13, 81.
- Freight rates from Memphis to points in Arkansas, 11 I. C. C. 180.
- Bills of lading in official classification territory, Docket No. 787.
- Alleged unlawful discrimination, 11 I. C. C. 587.
- Allowances to terminal railroads, 10 I. C. C. 385, 661.
- Class and commodity rates to Texas, 11 I. C. C. 238.
- Coal and mine supplies, 10 I. C. C. 473.
- Corn and corn products, 11 I. C. C. 212, 220, 227.
- Differential freight rates, 11 I. C. C. 13, 81.
- Export and domestic grain rates, 8 I. C. C. 214.
- Joint rating, 11 I. C. C. 587.
- Safety appliances, power brakes, 11 I. C. C. 429.
- Rates on import and domestic traffic, 9 I. C. C. 650.
- Refrigeration, 11 I. C. C. 129.
- Allowances to elevators by Union Pacific R. R. Co., 10 I. C. C. 309; 12 I. C. C. 85; 14 I. C. C. 315.
- Car shortage and other insufficient transportation facilities, 12 I. C. C. 561.
- Consolidations and combinations of carriers, relations between such carriers, and community interests therein, their rates, facilities and practices, 12 I. C. C. 277.
- Free transportation of newspaper employees on special newspaper trains, 12 I. C. C. 15.
- Issuance of passes to bondsmen, 12 I. C. C. 588.
- Party rate tickets, 12 I. C. C. 95.
- Railroad telegraph contracts, 12 I. C. C. 10.
- Right of railroad companies to exchange free transportation with local transfer and baggage express companies, 12 I. C. C. 39.
- Through routes and through rates, 12 I. C. C. 163.
- Transportation of land and immigration agents, 12 I. C. C. 7.
- Rates, practices, accounts and revenues of carriers, 13 I. C. C. 123, 212.
- Application for extension of time under the "Hours of Service" Act, 13 I. C. C. 134, 140.
- Demurrage charges on privately owned tank cars, 13 I. C. C. 378.
- Released rates, 13 I. C. C. 550.
- Bills of lading, 14 I. C. C. 346.

CHAPTER XVIII

CASES IN WHICH THE RULINGS OF THE COMMISSION WERE SUSTAINED BY THE COURTS

James & Mayer &c. v. C., N. & T. P. Ry., 4 I. C. C. 744; 4 I. C. Rep. 582.

Int. Com. Com. v. C., N. & T. P. Ry., 56 Fed. R. 925; 162 U. S. 184.

N. Y. & No. Ry. v. N. Y. & N. E. Ry., 4 I. C. C. 702; 50 Fed. R. 867.

Chamber of Com., Minneapolis, v. C., M. & St. P., 5 I. C. C. 571.
Int. Com. Com. v. C., M. & St. P. (No decision by court.)

City of St. Cloud, Minn., v. No. Pac. Co., 8 I. C. C. 346.
Int. Com. Com. v. No. Pac. Ry. (No decision by court.)

Savannah Bureau &c. v. L. & N. Ry., 8 I. C. C. 377.
Int. Com. Com. v. L. & N. Ry., 118 Fed. R. 613.

Mayor and Council of Tifton v. L. & N. Ry., 9 I. C. C. 160.
Int. Com. Com. v. L. & N. Ry. (No decision by court.)

Tift v. So. Ry., 10 I. C. C. 548; 123 Fed. R. 730; 138 Fed. R. 735;
206 U. S. 428.

Procter & Gamble Co. v. C., H. & D. Ry., 9 I. C. C. 440.
Int. Com. Com. v. C., H. & D. Ry., 146 Fed. R. 559; 206 U. S. 142.

Central Yellow Pine Asso. v. Ill. Cent. Ry., 10 I. C. C. 505.
Int. Com. Com. v. Ill. Cent. Ry., 206 U. S. 441.

Aberdeen Group &c. v. M. & O. Ry., 10 I. C. C. 289; Circuit Court,
Northern District of Mississippi. (Not reported.)

St. Louis Hay & Grain Co. v. So. Ry., 11 I. C. C. 90; 149 Fed. R. 609; 153 Fed. R. 728.

Preston & Davis v. D., L. & W. Ry., 12 I. C. C. 114; 155 Fed. R. 512.
Int. Com. Com. v. N. Y., N. H. & H. Ry., 128 Fed. R. 59; 200 U. S.
361.

**CASES IN WHICH THE RULINGS OF THE COMMISSION
WERE NOT SUSTAINED BY THE COURTS**

Ken. & Ind. Bridge Co. v. L. & N. Ry., 2 I. C. C. 162; 37 Fed. R. 567.

Pittsburg &c. Ry. v. B. & O. Ry., 3 I. C. C. 465.
Int. Com. Com. v. B. & O. Ry., 43 Fed. R. 37; 145 U. S. 263.

San Bernardino &c. v. A., T. & S. F. Ry., 4 I. C. C. 104.
Int. Com. Com. v. A., T. & S. F. Ry., 50 Fed. R. 295; 149 U. S. 264.

Coxe Bros. v. Lehigh V. Ry., 4 I. C. C. 535.
Int. Com. Com. v. Lehigh V. Ry., 49 Fed. R. 177; 74 Fed. R. 784.

Stone & Carten v. D., G., H. & M. Ry., 3 I. C. C. 613.
Int. Com. Com. v. D., G., H. & M. Ry., 57 Fed. R. 1005; 74 Fed. R.
803; 167 U. S. 633.

Railroad Com. of Florida v. S. F. & W. Ry., 5 I. C. C. 13, 136.
Florida Fruit Ex. v. S. F. & W. Ry., 4 I. C. Rep. 400, 589; 167
U. S. 512.

New York Board &c. v. Penna. Ry., 4 I. C. C. 447; 4 I. C. Rep. 62.
Int. Com. Com. v. Tex. & Pac. Ry., 52 Fed. R. 187; 57 Fed. R. 948;
162 U. S. 197.

Delaware State Grange &c. v. N. Y., P. & N. Ry., 4 I. C. C. 588.
Int. Com. Com. v. N. Y., Phil. & N. Ry. (Case dismissed in court,
but not reported.)

Int. Com. Com. v. L. & N. Ry., 5 I. C. C. 466; 73 Fed. R. 409.

Board &c. of Troy v. Alabama Mid. Ry., 6 I. C. C. 1.
Int. Com. Com. v. Alabama Mid. Ry., 69 Fed. R. 227; 74 Fed. R.
715; 168 U. S. 144.

Page &c. v. D., L. & W. Ry., 6 I. C. C. 148, 548.
Int. Com. Com. v. D., L. & W. Ry., 64 Fed. R. 723.

Freight Bureau &c. v. C., N. O. & T. P. Ry., 6 I. C. C. 195.

Int. Com. Com. v. C., N. O. & T. P. Ry., 62 Fed. R. 690; 64 Fed. R. 981; 76 Fed. R. 183, 1007; 167 U. S. 479.

Behlmer v. L. & N. Ry., 6 I. C. C. 257; 71 Fed. R. 835; 83 Fed. R. 898; 169 U. S. 644; 175 U. S. 648.

Truck Farmers &c. v. Northeastern &c. Ry., 6 I. C. C. 295.

Int. Com. Com. v. Northeastern &c. Ry., 74 Fed. R. 70; 83 Fed. R. 611.

McClelen &c. v. So. Ry., 6 I. C. C. 588.

Int. Com. Com. v. So. Ry., 105 Fed. R. 703.

Merchants' Union &c. v. No. Pac. Ry., 5 I. C. C. 478.

Farmers' Loan & T. Co. v. No. Pac. Ry., 83 Fed. R. 249.

Board &c. of Chattanooga v. E., T., Va. & Ga. Ry., 5 I. C. C. 546;
10 I. C. C. 111.

Int. Com. Com. v. E., T., Va. & Ga. Ry., 85 Fed. R. 107; 99 Fed. R. 52; 181 U. S. 1.

Georgia Railroad Commission Cases	}	5 I. C. C. 324; 88 Fed. R.
Int. Com. Com. v. W. & A. Ry.		186; 93 Fed. R. 83; 181
Int. Com. Com. v. Clyde Steamship Co.		U. S. 29.

Colorado Fuel & Iron Co. v. So. Pac. Co., 6 I. C. C. 488.

Int. Com. Com. v. So. Pac. Co., 74 Fed. R. 42; 101 Fed. R. 779.

Cattle Raisers' &c. v. C., B. & Q. Ry., 7 I. C. C. 513, 555a; 10 I. C. C. 83.

Int. Com. Com. v. C., B. & Q. Ry., 94 Fed. R. 272; 98 Fed. R. 173;
103 Fed. R. 249; 186 U. S. 320.

Callaway v. L. & N. Ry., 7 I. C. C. 431.

Int. Com. Com. v. L. & N. Ry., 101 Fed. R. 146; 102 Fed. R. 709;
108 Fed. R. 988; 190 U. S. 273.

Board &c. of Hampton v. N. C. & St. L. Ry., 8 I. C. C. 503.

Int. Com. Com. v. N. C. & St. L. Ry., 120 Fed. R. 934.

Gustin v. So. Pac. Co., 8 I. C. C. 481.

Int. Com. Com. v. So. Pac. Co., Circuit Court, Northern District of California.

City of Danville v. So. Ry., 8 I. C. C. 409.

Int. Com. Com. v. So. Ry., 117 Fed. R. 741; 122 Fed. R. 800.

Wilmington &c. v. C., P. & Va. Ry., 9 I. C. C. 118.

Int. Com. Com. v. C., P. & Va. Ry., 124 Fed. R. 624.

National Hay Asso. v. Lake Shore & M. S. Ry., 9 I. C. C. 264.

Int. Com. Com. v. Lake Shore & M. S. Ry., 134 Fed. R. 942; 202 U. S. 613.

Chicago Live Stock Exchange v. Chicago & Gt. W. Ry., 10 I. C. C. 428.

Int. Com. Com. v. Chicago & Gt. W. Ry., 141 Fed. R. 1003; 209 U. S. 108.

Consolidated Forwarding Co. v. So. Pac. Co., 9 I. C. C. 182.

Int. Com. Com. v. So. Pac. Co., 132 Fed. R. 829; 200 U. S. 536.

CHAPTER XIX

RULES OF PRACTICE BEFORE THE COMMISSION IN CASES AND PROCEEDINGS UNDER THE ACT TO REGULATE COMMERCE

I

Public Sessions

The general sessions of the Commission for hearing contested cases, including oral argument, will be held at its office in the American Bank Building, No. 1317 F street NW., Washington, D. C., and the two weeks beginning with the first Monday in each month are set aside for that purpose.

Special sessions may be held at other places as ordered by the Commission.

II

Parties to Cases

Any person, firm, company, corporation, or association, mercantile, agricultural, or manufacturing society, body politic or municipal organization, or any common carrier, or the railroad commissioner or commission of any State or Territory, may complain to the Commission by petition, of anything done, or omitted to be done, in violation of the provisions of the act to regulate commerce by any common carrier or carriers or other parties subject to the provisions of said act. Where a complaint relates to the rates, regulations, or practices of a single carrier no other carrier need be made a party, but if it relates to matters in which two or more carriers, engaged in transportation by continuous carriage or shipment, are interested, the several carriers participating in such carriage or shipment are proper parties defendant.

When a complaint relates to rates, regulations, or practices of carriers operating different lines, and the object of the proceeding is to secure correction of such rates, regulations, or practices on each of said lines, all the carriers operating such lines must be made defendants.

When the line of a carrier is operated by a receiver or trustee, both the carrier and its receiver or trustee should be made defendants in cases involving transportation over such line.

Persons or carriers not parties may petition in any proceeding for leave to intervene and be heard therein. Such petition shall set forth the petitioner's interest in the proceeding. Leave granted on

such application shall entitle the intervener to appear and be treated as a party to the proceeding, but no person not a carrier who intervenes in behalf of the defense shall have the right to file an answer or otherwise become a party, except to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard, in person or by counsel, on the argument of the case.

III

Complaints

Complaints must be by petition setting forth briefly the facts claimed to constitute a violation of the law. The name of the carrier or carriers complained against must be stated in full, and the address of the petitioner, with the name and address of his attorney or counsel, if any, must appear upon the petition. The petition need not be verified. The complainant must furnish as many copies of the petition as there may be parties complained against to be served and three additional copies for the use of the Commission.

The Commission will cause a copy of the petition, with notice to satisfy or answer the same within a specified time, to be served personally or by mail, in its discretion, upon each defendant.

IV

Answers

A defendant must answer within twenty days from the date of the notice above provided for, but the Commission may, in a particular case, require the answer to be filed within a shorter time. The time prescribed in any case may be extended, upon good cause shown, by the Commission. The original answer must be filed with the secretary of the Commission at its office in Washington, and a copy thereof at the same time served by the defendant, personally or by mail, upon the complainant, who must forthwith notify the secretary of its receipt. The answer must specifically admit or deny the material allegations of the petition, and also set forth the facts which will be relied upon to support any such denial. If a defendant shall make satisfaction before answering, a written acknowledgment thereof, showing the character and extent of the satisfaction given, must be filed by the complainant, and in that case the fact and manner of satisfaction, without other matter, may be set forth in the answer. If satisfaction be made after the filing and service of an answer, such written acknowledgment must also be filed by the complainant, and a supplemental answer setting forth the fact and manner of satisfaction must be filed by the defendant.

V

Notice in Nature of Demurrer

A defendant who deems the petition insufficient to show a breach of legal duty may, instead of answering or formally demurring,

serve on the complainant notice of hearing on the petition; and in such case the facts stated in the petition will be deemed admitted. A copy of the notice must at the same time be filed with the secretary of the Commission. The filing of an answer, however, will not be deemed an admission of the sufficiency of the petition, but a motion to dismiss for insufficiency may be made at the hearing.

VI

Service of Papers

Copies of notices or other papers must be served upon the adverse party or parties, personally or by mail, and when any party has appeared by attorney service upon such attorney shall be deemed proper service upon the party.

VII

Amendments

Upon application of any party, amendments to any petition or answer, in any proceeding or investigation, may be allowed by the Commission, in its discretion.

VIII

Adjournments and Extensions of Time

Adjournments and extensions of time may be granted upon the application of any party, in the discretion of the Commission.

IX

Stipulations

The parties to any proceeding or investigation before the Commission may, by stipulation in writing filed with the secretary, agree upon the facts, or any portion thereof, involved in the controversy, which stipulation shall be regarded and used as evidence on the hearing. It is desired that the facts be thus agreed upon whenever practicable.

X

Hearings

Upon issue being joined by the service of an answer or notice of hearing on the petition, the Commission will assign a time and place for hearing the case, which will be at its office in Washington, unless otherwise ordered. Witnesses will be examined orally before the Commission, unless their testimony be taken or the facts be agreed upon as provided for in these rules. The complainant must in all cases establish the facts alleged to constitute a violation of the

law, unless the defendant admits the same or fails to answer the petition. The defendant must also prove facts alleged in the answer, unless admitted by the petitioner, and fully disclose its defense at the hearing.

In case of failure to answer, the Commission will take such proof of the facts as may be deemed proper and reasonable, and make such order thereon as the circumstances of the case appear to require.

Cases may be heard by one or more members of the Commission, or by a special agent or examiner, as ordered by the Commission. When testimony is directed to be taken by a special agent or examiner, such officer shall have power to administer oaths, examine witnesses, and receive evidence, and shall make report thereof to the Commission.

All cases shall be orally argued in Washington, D. C., or submitted upon briefs, unless otherwise ordered by the Commission.

XI

Depositions

The testimony of any witness may be taken by deposition, at the instance of a party, in any case before the Commission, and at any time after the same is at issue. The Commission may also order testimony to be taken by deposition, in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any authorized special agent or examiner of the Commission, judge of any court of the United States, or any commissioner of a circuit or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties or otherwise interested in the proceeding or investigation. Reasonable notice must be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, which notice shall state the name of the witness and the time and place of the taking of his deposition, and a copy of such notice shall be filed with the secretary of the Commission.

When testimony is to be taken on behalf of a common carrier in any proceeding instituted by the Commission on its own motion, reasonable notice thereof in writing must be given by such carrier to the secretary of the Commission.

Every person whose deposition is taken shall be cautioned and sworn (or may affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing, which may be typewriting, by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the witness.

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before

an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the secretary. All depositions must be promptly filed with the secretary.

XII

Witnesses and Subpœnas

Subpœnas requiring the attendance of witnesses from any place in the United States to any designated place of hearing, for the purpose of taking the testimony of such witnesses orally before one or more members of the Commission, or an authorized special agent or examiner of the Commission, or by deposition, will, upon the application of either party, or upon the order of the Commission directing the taking of such testimony, be issued by any member of the Commission.

Subpœnas for the production of books, papers, or documents (unless directed to issue by the Commission upon its own motion) will only be issued upon application in writing; and when it is sought to compel witnesses, not parties to the proceeding, to produce such documentary evidence, the application must be sworn to and must specify, as nearly as may be, the books, papers, or documents desired; that the same are in the possession of the witness or under his control; and also, by facts stated, show that they contain material evidence necessary to the applicant. Applications to compel a party to the proceeding to produce books, papers, or documents need only set forth in a general way the books, papers, or documents desired to be produced, and that the applicant believes they will be of service in the determination of the case.

Witnesses whose testimony is taken orally or by deposition, and the magistrate or other officer taking such depositions, are severally entitled to the same fees as are paid for like services in the courts of the United States, such fees to be paid by the party at whose instance the testimony is taken.¹

XIII

Documentary Evidence

Where relevant and material matter offered in evidence is embraced in a report, tariff, rate sheet, classification, book, pamphlet, written or printed statement, or document of any kind containing other matter not material or relevant and not intended to be put in evidence, such report, etc., in whole, shall not be received or allowed to be filed in a cause on hearing before this Commission or at any time during the pendency thereof, but counsel or other party offering the same shall also present in convenient and proper form for filing a copy of such material and relevant matter,

¹ Fees of witnesses are fixed by law at \$1.50 for each day's attendance at the place of hearing or of taking depositions, and 5 cents per mile for going to said place from his place of residence and 5 cents per mile for returning therefrom.

and that only shall be received and allowed to be filed as evidence and made part of the record in such cause; provided, however, that, if practicable, such matter may be read and taken down by the reporter and thus made part of the record.

XIV

Briefs

Unless otherwise specially ordered, printed briefs shall be filed on behalf of the parties in each case. The brief for complainant and the brief or briefs for the defense shall contain an abstract of the evidence relied upon by the party filing the same, and in such abstract reference shall be made to the pages of the record wherein the evidence appears. The abstract of evidence shall follow the statement of the case and precede the argument. Briefs shall be filed with the Commission and served upon the adverse party or parties by the complainant within fifteen days after the taking of testimony has been concluded, by the defendant or defendants within ten days thereafter, and the complainant shall have five days' additional time for reply. A shorter time or different apportionment not involving greater time may be specially ordered in any case.

Briefs shall be printed in twelve-point type, on antique finish paper, 5½ inches wide by 9 inches long, with suitable margins, double-leaded text and single-leaded citations.

When the case is assigned for oral argument all briefs shall be filed and served at least five days before such argument. All briefs shall be filed with the secretary and shall be accompanied by notice showing service upon the adverse party. Fifteen copies of each brief shall be filed for the use of the Commission.

All parties will be required to comply strictly with this rule, and except for good cause shown no extension will be allowed.

XV

Rehearing

Applications for reopening a case after final submission, or for rehearing after decision made by the Commission, must be by petition, and must state specifically the grounds upon which the application is based. If such application be to reopen the case for further evidence, the nature and purpose of such evidence must be briefly stated, and the same must not be merely cumulative. If the application be for a rehearing, the petition must specify the findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the grounds of error; and when any decision, order, or requirement of the Commission is sought to be reversed, changed, or modified on account of facts and circumstances arising subsequent to the hearing, or of consequences resulting from compliance with such decision, order, or requirement which are claimed to justify a reconsideration of the case, the matters relied upon by the applicant must be fully set forth.

XVI

Printing of Pleadings, etc.

Pleadings, depositions, and other papers of importance shall be printed or in typewriting, and when not printed only one side of the paper shall be used.

XVII

Copies of Papers or Testimony

Copies of any report, decision, order, or requirement of the Commission will be furnished without charge upon application to the secretary by any person or carrier party to the proceeding.

One copy of the testimony will be furnished by the Commission for the use of the complainant and one copy for the use of the defendant, without charge; and when two or more complainants or defendants have appeared at the hearing, such complainants or defendants must designate to whom the copy for their use shall be delivered.

XVIII

Compliance With Orders

Upon the issuance of an order against any defendant or defendants, after hearing, investigation, and report by the Commission, such defendant or defendants must promptly notify the secretary of the Commission, upon the date when such order becomes effective, as to whether such defendant or defendants has complied or not with the provisions of said order; and when a change in rates is required, such notice must be given in addition to the filing of a schedule or tariff showing such change in rates.

XIX

Applications by Carriers Under Proviso Clause of Fourth Section

Any common carrier may apply to the Commission, under the proviso clause of the fourth section, for authority to charge for the transportation of like kind of property less for a longer than for a shorter distance over the same line, in the same direction, the shorter being included within the longer distance. Such application shall be by petition, which shall specify the places and traffic involved, the rates charged on such traffic for the shorter and longer distances, the carriers other than the petitioner which may be interested in the traffic, the character of the hardship claimed to exist, and the extent of the relief sought by the petitioner. Upon the filing of such a petition, the Commission will take such action as the circumstances of the case seem to require.

XX

Information to Parties

The secretary of the Commission will, upon request, advise any party as to the form of petition, answer, or other paper necessary to be filed in any case, and furnish such information from the files of the Commission as will conduce to a proper presentation of facts material to the controversy.

XXI

Address of the Commission

All complaints concerning anything done or omitted to be done by any common carrier, and all petitions or answers in any proceeding, or applications in relation thereto, and all letters and telegrams for the Commission, must be addressed to Washington, D. C., unless otherwise specially directed.

FORMS

These forms may be used in cases to which they are applicable, with such alterations as the circumstances may render necessary.

No. 1

Complaint Against a Single Carrier

INTERSTATE COMMERCE COMMISSION

A. B.
against
 THE ——— RAILROAD COMPANY. }

The petition of the above-named complainant respectfully shows:

I. That (*here let complainant state his occupation and place of business*).

II. That the defendant above named is a common carrier engaged in the transportation of passengers and property by railroad between points in the State of ——— and points in the State of ———, and as such common carrier is subject to the provisions of the act to regulate commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

III. That (*here state concisely the matters intended to be complained of. Continue numbering each succeeding paragraph as in Nos. I, II, and III*).

Wherefore the petitioner prays that the defendant may be required to answer the charges herein, and that after due hearing and investigation an order be made commanding the defendant

to cease and desist from said violations of the act to regulate commerce, and for such other and further order as the Commission may deem necessary in the premises. *(The prayer may be varied so as to ask also for the ascertainment of lawful rates or practices and an order requiring the carrier to conform thereto. If reparation for any wrong or injury be desired, the petitioner should state the nature and extent of the reparation he deems proper.)*

Dated at ———, ——— ———, 190—.

A. B.

(Complainant's signature.)

No. 2

Complaint Against Two or More Carriers

INTERSTATE COMMERCE COMMISSION

	A. B.	}
	<i>against</i>	
THE ———	RAILROAD COMPANY,	
	AND	
THE ———	RAILROAD COMPANY.	

The petition of the above-named complainant respectfully shows:

I. That *(here let complainant state his occupation and place of business)*.

II. That the defendants above named are common carriers engaged in the transportation of passengers and property by continuous carriage or shipment, wholly by railroad *(or partly by railroad and partly by water, as the case may be)*, between points in the State of ——— and points in the State of ———, and as such common carriers are subject to the provisions of the act to regulate commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

(Then proceed as in Form 1.)

No. 3

Answer

INTERSTATE COMMERCE COMMISSION

	A. B.	}
	<i>against</i>	
THE ———	RAILROAD COMPANY.	

The above-named defendant, for answer to the complaint in this proceeding, respectfully states—

I. That (*here follow the usual admissions, denials, and averments. Continue numbering each succeeding paragraph*).

Wherefore the defendant prays that the complaint in this proceeding be dismissed.

THE ——— RAILROAD COMPANY
By E. F.
(*Title of officer.*)

No. 4

Notice by Carrier Under Rule V

INTERSTATE COMMERCE COMMISSION

A. B.
against
THE ——— RAILROAD COMPANY. }

Notice is hereby given under Rule V of the Rules of Practice in proceedings before the Commission that a hearing is desired in this proceeding upon the facts as stated in the complaint.

THE ——— RAILROAD COMPANY,
By E. F.
(*Title of officer.*)

No. 5

Subpœna

To ———,

You are hereby required to appear before ——— in the matter of a complaint of ——— against ———, as a witness on the part of ———, on the ——— day of ———, 190—, at ——— o'clock —. m. at ———, and bring with you then and there ———.

Dated ———.
(Seal.)

———,
Commissioner.

———,
Attorney for ———.

(NOTICE.—Witness fees for attendance under this subpœna are to be paid by the party at whose instance the witness is summoned, and every copy of this summons for the witness must contain a copy of this notice.)

No. 6

Notice of Taking Depositions Under Rule XII

INTERSTATE COMMERCE COMMISSION

A. B.
against
 THE ——— RAILROAD COMPANY.

You are hereby notified that G. H. will be examined before C. D.,
 a ——— (*title of officer or magistrate*), at ———, on the ——— day of
 ———, 190—, at ——— o'clock in the ———noon, as a witness for the
 above-named complainant (*or defendant, as the case may be*), accord-
 ing to act of Congress in such case made and provided, and the
 Rules of Practice of the Interstate Commerce Commission, at which
 time and place you are notified to be present and take part in the
 examination of the said witness.

Dated ———, 190—.

I. J.

(*Signature of complainant or defendant, or of counsel.*)

To A. B., the above-named complainant (*or The ——— Railroad
 Company, the above-named defendant; or to K. L., counsel for the
 above-named complainant or defendant*).

CHAPTER XX

POWER OF CONGRESS OVER INTERSTATE COMMERCE

Provisions Contained in the Constitution of the United States Relating to Commerce

The Congress shall have power to regulate commerce with foreign nations, among the several States, and with the Indian tribes. Art. I, Sec. 8, Par. 3.

The Congress shall have power to make all laws which shall be necessary and proper for carrying into effect the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or any officer thereof. Art. I, Sec. 8, Par. 18.

No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter or pay duties in another. Art. I, Sec. 9, Par. 5.

The citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States. Art. IV, Sec. 3.

This Constitution and the laws of the United States which shall be made in pursuance thereof and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. Art. VI, Par. 2.

The powers not delegated to the United States by this Constitution nor prohibited by it to the States are reserved to the States respectively, or to the people. Amendment X.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law. Amendment XIV.

The power to regulate is to prescribe the rule by which the commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent,

and acknowledges no limitations other than are prescribed in the Constitution. If, as has already been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions in the exercise of the power as are found in the Constitution of the United States. *Gibbons v. Ogden*, 9 Wheat. 1, 197; 6 L. ed. 23, 70.

It is obvious that the government, in regulating commerce with foreign nations and among the States, may use means that may also be employed by a State in the exercise of its acknowledged powers,—that, for example, of regulating commerce within a State. *Gibbons v. Ogden*, 9 Wheat. 204; 6 L. ed. 72.

“The power to regulate commerce . . . amounts to nothing more than a power to limit and restrain it at pleasure.” *Gibbons v. Ogden*, 9 Wheat. 227; 6 L. ed. 77.

It may be doubted whether any of the evils proceeding from the feebleness of the Federal government contributed more to that great revolution which induced the present system than the deep and general conviction that commerce ought to be regulated by Congress. It is not, therefore, matter of surprise that the grant should be as extensive as the mischief, and should comprehend all foreign commerce and all commerce arising among the States. *Brown v. Maryland*, 12 Wheat. 446; 6 L. ed. 688.

The power to regulate commerce includes that of punishing all offenses against commerce. *U. S. v. Coombs*, 12 Pet. 72; 9 L. ed. 1004.

The design and object of that power, as evinced in the history of the Constitution, was to establish a perfect equality amongst the several States as to commercial rights, and to prevent unjust and invidious distinctions which local jealousies or local and partial interests might be disposed to introduce and maintain. *Veazie v. Moor*, 14 How. 574; 14 L. ed. 547.

“Commerce is a term of the largest import. . . . The power to regulate it embraces all the instruments by which such commerce may be conducted.” *Welton v. Missouri*, 91 U. S. 280; 23 L. ed. 349.

The power conferred upon Congress to regulate commerce with foreign nations and among the several States is not confined to the instrumentalities of commerce known or in use when the Constitution was adopted, but keeps pace with the progress of the country, and adapts itself to the new developments of time and of circumstances. It was intended for the government of the business to which it relates

at all times and under all circumstances; and it is not only the right, but the duty, of Congress to take care that intercourse among the States and the transmission of intelligence are not obstructed or unnecessarily incumbered by state legislation. *Pensacola Teleg. Co. v. Western U. Teleg. Co.*, 96 U. S. 9; 24 L. ed. 710.

"The power to regulate that commerce, . . . vested in Congress, is the power to prescribe the rules by which it shall be governed,—that is, the conditions upon which it shall be conducted. . . . The power also embraces within its control all the instrumentalities by which that commerce may be carried on, and the means by which it may be aided and encouraged." *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 203; 29 L. ed. 161; 1 I. C. Rep. 382.

When a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced. *The Daniel Ball*, 10 Wall. 565, sub nom. *The Daniel Ball v. U. S.*, 19 L. ed. 1002.

But this movement does not begin until the articles have been shipped or started for transportation from the one State to the other. *Coe v. Errol*, 116 U. S. 517; 29 L. ed. 715.

This species of legislation is one which must be, if established at all, of a general and national character. *W., St. L. & P. Ry. v. Illinois*, 118 U. S. 577; 30 L. ed. 251.

For the regulation of commerce as thus defined there can be only one system of rules applicable alike to the whole country; and the authority which can act for the whole country can alone adopt such a system. *Mobile County v. Kimball*, 102 U. S. 691; 26 L. ed. 238.

The power to regulate commerce embraces a vast field, containing not only many but exceedingly various subjects quite unlike in their nature. *Cooley v. Philadelphia Port Wardens*, 12 How. 299; 13 L. ed. 996.

The power to regulate commerce among the several States is granted to Congress in terms as absolute as is the power to regulate commerce with foreign nations. *Brown v. Houston*, 114 U. S. 622; 29 L. ed. 257.

The uses of railroad corporations are public, and therefore they are subject to legislative control in all respects necessary to protect the public against danger, injustice and oppression. *N. Y. & N. E. Ry. v. Bristol*, 151 U. S. 556; 38 L. ed. 269.

Congress has plenary power, subject to the limitations imposed by the Constitution, to prescribe the rule by which commerce among the several States is to be governed, and may, in its discretion, employ any appropriate means, not forbidden by the Constitution, to

carry into effect, and accomplish the objects of, a power given to it by the Constitution. *I. C. C. v. Brimson*, 154 U. S. 447; 38 L. ed. 1047; 4 I. C. Rep. 545.

The making and fixing of rates by either a legislature directly or by a commission do not work a deprivation of property without due process of law. *Munn v. Illinois*, 94 U. S. 113; 24 L. ed. 77; *Davidson v. New Orleans*, 96 U. S. 97; 24 L. ed. 616; *Stone v. Farmers' Loan & T. Co.*, 116 U. S. 307; 29 L. ed. 636; *Dow v. Beidelman*, 125 U. S. 680; 31 L. ed. 841; 2 I. C. Rep. 56; *M. & St. L. R. Co. v. Beckwith*, 129 U. S. 26; 32 L. ed. 585, and cases cited; *Budd v. New York*, 143 U. S. 517; 36 L. ed. 247; 4 I. C. Rep. 45; *N. Y. & N. E. Ry. v. Bristol*, 151 U. S. 556; 38 L. ed. 269; *Reagan v. Farmers' Loan & T. Co.*, 154 U. S. 362; 38 L. ed. 1014; 4 I. C. Rep. 560.

The State does not lose the right to fix the price because an individual voluntarily undertakes to do the (public) work. *Budd v. New York*, 143 U. S. 517; 36 L. ed. 247; 4 I. C. Rep. 45.

The Nebraska statute fixing maximum rates is not obnoxious to the Fourteenth Amendment. *Ames v. Union P. Ry.*, 64 Fed. R. 165; 4 I. C. Rep. 835.

The compelling of railway companies to comply with the order of railroad commissioners regulating rates is due process of law. 8 Am. & Eng. Enc. of Law, 911; *C., M. & St. P. Ry. v. Becker*, 32 Fed. R. 849; *L. & N. Ry. v. Railroad Commission*, 19 Fed. Rep. 679, 16 Am. & Eng. R. Cas. 1; *Railroad Comrs. v. Oregon R. & Nav. Co.*, 17 Or. 65; 2 L. R. A. 195; 35 Am. & Eng. R. Cas. 542; *State ex rel. Railroad & Warehouse Commission v. C., M. & St. P. Ry.*, 38 Minn. 281, 37 N. W. 782; *Stone v. N., J. & C. R. Co.*, 62 Miss. 646; *Stone v. Farmers' Loan & T. Co.*, 116 U. S. 307; 29 L. ed. 636; *State ex rel. Board of Transportation v. F., E. & M. Valley Ry.*, 22 Neb. 313; 32 Am. & Eng. R. Cas. 426; *People v. N. Y., L. E. & W. Ry.*, 104 N. Y. 58; *State v. N. H. & N. Ry.*, 37 Conn. 153.

"The principal objects of the Interstate Commerce Act were to secure just and reasonable charges for transportation. . . ." *I. C. C. v. B. & O. Ry.*, 145 U. S. 263; 36 L. ed. 699; 4 I. C. Rep. 92.

It is difficult to perceive how the power to fix and regulate the charges for such transportation can be considered in any other light than that of a power to regulate commerce. *Ill. Cent. Ry. v. Stone*, 20 Fed. R. 468.

It is not doubted that Congress has the power to go beyond the general regulations of commerce which it is accustomed to establish, and to descend to the most minute directions if it shall be deemed advisable. *Cooley, Const. Lim.*, 732, quoted with approval by Mr.

Justice Field in the case of Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196; 29 L. ed. 158; 1 I. C. Rep. 382.

That this power to regulate by fixing charges for interstate transportation is vested solely in Congress by Article I, Section 8, paragraph 3 of the Constitution of the United States is, in my opinion, equally well settled by numerous decisions of the Supreme Court of the United States. *M. & O. Ry. v. Sessions*, 28 Fed. R. 592.

Several of the state statutes, under state constitutions containing nearly identical provisions on the subject as the Federal Constitution, allowing state railroad commissions to make and fix railway rates for such States, which said rates were to be operative until set aside by the courts, have been upheld as valid and constitutional by the United States Supreme Court. See *P. & A. Ry. v. State (Fla.)*, 3 L. R. A. 661, with extensive notes to that case and notes to *W. & L. Turnp. Road Co. v. Croxton (Ky.)*, 33 L. R. A. 177.

This Federal Commission has assigned to it the duties, and performs for the United States in respect to that interstate commerce committed by the Constitution to the exclusive care and jurisdiction of Congress the same functions, which state commissioners exercise in respect to local or purely internal commerce, over which the States appointing them have exclusive control. Their validity in their respective spheres of operation stands upon the same footing. The validity of state commissions invested with powers as ample and large as those conferred upon the Federal Commission has not been successfully questioned when limited to that local or internal commerce over which the States have exclusive jurisdiction; and no valid reason is seen for doubting or questioning the authority of Congress, under its sovereign and exclusive power to regulate commerce among the several States, to create like commissions for the purpose of supervising, investigating, and reporting upon matters or complaints connected with or growing out of interstate commerce. What one sovereign may do in respect to matters within its exclusive control, the other may certainly do in respect to matters over which it has exclusive authority. *Kentucky & I. Bridge Co. v. L. & N. Ry.*, 37 Fed. R. 567; 2 I. C. Rep. 380; 2 L. R. A. 289.

The power granted to Congress to regulate commerce is necessarily exclusive whenever the subjects of it are national or admit only of one uniform system or plan of regulation throughout the country. . . . In the matter of interstate commerce the United States are but one country, and are and must be subject to one system of regulation, and not to a multitude of systems. *Robbins v. Shelby County Taxing Dist.*, 120 U. S. 489; 30 L. ed. 694;

1 I. C. Rep. 45; *Stoutenburgh v. Hennick*, 129 U. S. 141; 32 L. ed. 637.

Congress may, under certain conditions, reduce the rates of fare on the Union Pacific Railroad, if unreasonable, and fix and establish the same by law. 12 Stat. L. 497, chap. 120, sec. 18. This statute is discussed by Mr. Justice Brewer in *Ames v. Union P. Ry.*, 64 Fed. R. 165; 4 I. C. Rep. 835, and held not to conclude the State of Nebraska from fixing rates until Congress takes action.

This act (of Colorado) was intended to apply to intrastate traffic the same wholesome rules and regulations which Congress two years thereafter applied to commerce between the States. *Union P. Ry. v. Goodridge*, 149 U. S. 680; 37 L. ed. 896.

The Interstate Commerce Commission is an administrative board, and the courts are only to be resorted to when the Commission prefers to enforce the provisions of the statute by a direct proceeding in the court, or when the orders of the Commission have been disregarded. *I. C. C. v. C., N. O. & T. P. Ry.*, 162 U. S. 184; 40 L. ed. 935; 5 I. C. Rep. 391.

Upon the power of legislatures to fix tolls, rates or prices, see note to case of *Winchester & L. Turnp. Road Co. v. Croxton* (Ky.), 33 L. R. A. 177.

A statute imposing a penalty for charging more than just and reasonable compensation for the services of a carrier, without fixing any standard to determine what is just and reasonable, thus leaving the criminality of the carrier's act to depend on the jury's view of the reasonableness of a rate charged, is in violation of the constitutional provision against taking property without due process of law. *L. & N. Ry. v. Com.*, 99 Ky. 132; 33 L. R. A. 209.

Penalties cannot be thus inflicted at the discretion of a jury. . . . The legislature cannot delegate this power to a jury. If it can declare it a criminal act for a railroad corporation to take more than a "fair and just return" on its investments, it must, in order to maintain the validity of the law, define with reasonable certainty what would constitute such "fair and just return." *L. & N. Ry. v. Railroad Commission*, 19 Fed. R. 679.

The Supreme Court of the United States, in *Railroad Commission Cases*, 116 U. S. 336, sub nom. *Stone v. Farmers' Loan & T. Co.*, 29 L. ed. 646, refers to the last-named case and substantially approves it.

Although a statute has been held to be unconstitutional which left it to the jury to determine whether or not a charge was excessive and unreasonable, in order to ascertain whether a penalty is recover-

able, yet, where the action is merely for recovery of the illegal excess over reasonable rates, this is a question which is a proper one for a jury. 8 Am. & Eng. Ency. of Law, 935.

The Iowa railroad commission act was attacked for uncertainty on the ground that it did not prescribe what should constitute a reasonable rate; but as the statute declared that the rate fixed by the Commission should be *prima facie* evidence that it was reasonable, although the accused could show in defense that it was not reasonable, the Supreme Court of the State held that the statute was sufficiently definite, since the rate was fixed, although it was subject to attack in the courts. To the claim that the commissioners' rate would not secure the accused from conviction if it was excessive, the court declared that the State was precluded from denying that the commissioners' rate was a reasonable one. *B., C. R. & N. Ry. v. Dey*, 82 Iowa, 312; 3 I. C. Rep. 584; 12 L. R. A. 436.

The same decision in substance was made on this question by Judge Brewer, then of the United States Circuit Court, in the case of *C. & N. W. Ry. v. Dey*, 35 Fed. R. 866; 2 I. C. Rep. 325; 1 L. R. A. 744.

The Illinois act providing that a charge by a railroad company of more than reasonable rates shall constitute extortion is held to be sufficiently definite when construed with another section which provides that the railroad commission shall make a schedule of reasonable maximum rates. *C., B. & Q. Ry. v. People*, 77 Ill. 443.

And the validity of this provision of the Illinois statute has been further established by the Illinois Supreme Court. See *C., B. & Q. Ry. v. Jones*, 149 Ill. 361; 4 I. C. Rep. 683; 24 L. R. A. 141; *Stone v. Farmers' Loan & T. Co.*, 116 U. S. 307; 29 L. ed. 636, deciding the same way the Mississippi statute.

The Georgia statute is not violated unless the rates charged exceed those fixed by the Commission. *Sorrell v. Central R. Co.*, 75 Ga. 509.

But in order to constitute a crime the act must be one which the party is able to know in advance whether it is criminal or not. The criminality of an act cannot depend upon whether a jury may think it reasonable or unreasonable. *Tozer v. U. S.*, 52 Fed. R. 917; 4 I. C. Rep. 245.

An inquiry whether rates of carriers are reasonable or not is a judicial act; but to prescribe rates for the future is a legislative act. That Congress has transferred to any administrative body the power to prescribe a tariff of rates for carriage by a common carrier is not to be presumed or implied from any doubtful and uncertain language. If Congress had intended to grant such a power to the Interstate

Commerce Commission, it cannot be doubted that it would have used language open to no misconception, but clear and direct. I. C. C. v. C., N. O. & T. P. Ry., 167 U. S. 479; 42 L. ed. 243.

In the case of *Munn v. Illinois*, 94 U. S. 113; 24 L. ed. 77, the Supreme Court of the United States, after a thorough review of the American and English authorities, has laid down the following fundamental principles governing public carriers and other *quasi*-public institutions:

1. Under the powers inherent in every sovereignty, a government may regulate the conduct of its citizens toward each other, and, when necessary for the public good, the manner in which each shall use his own property.

2. It has, in the exercise of these powers, been customary in England from time immemorial, and in this country from the first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, auctioneers, innkeepers, and many other matters of like quality, and in so doing to fix a maximum charge to be made for services rendered, accommodations furnished, and articles sold.

3. The Fourteenth Amendment to the United States Constitution does not in any wise amend the law in this particular.

4. When the owner of property devotes it to a use in which the public has an interest, he in effect grants to the public an interest in such use, and must to the extent of that interest submit to be controlled by the public.

5. The limitation by legislative enactment of the rate of charges for services rendered in an employment of a public nature, or for the use of property in which the public has an interest, establishes no new principle in the law, but only gives a new effect to an old one.

Thus the highest court has permanently established the broad principle that the public have the right to regulate charges in all enterprises affected with a public use. To this doctrine all the courts have steadfastly adhered. In this leading case it was also held that the courts had no right to interfere with the rates fixed by the law-making power. This doctrine, however, has been since somewhat qualified in the case of *Reagan v. Farmers' Loan & T. Co.*, 154 U. S. 412; 38 L. ed. 1028; 4 L. C. Rep. 1028, and other cases there cited, where it is held that when rates are confiscatory the courts may so declare and relegate the matter back to the lawmaking power for new rates, by which a reasonable profit is left to the carrier. But the principle that the legislative power, either directly or indirectly through a commission, can fix rates of freight and passenger traffic

within this constitutional limitation, has been uniformly upheld in all the decisions of the United States Supreme Court upon this subject.

From the public nature of the business of railroads and the interest which the public have in their operation, they are subject to state regulation, as to their state business. *Munn v. Illinois*, 94 U. S. 113; *Ruggles v. Illinois*, 108 U. S. 526, 541; *Wabash &c. Ry. v. Illinois*, 118 U. S. 557.

The public power to regulate and the private right of ownership co-exist and do not the one destroy the other, but the power to regulate cannot be arbitrarily exercised so as to infringe the right of ownership. (See cases cited above.)

A State may, in proper cases, order railroads to make through connections, and such order is not inherently unjust and unreasonable because the running of such train will impose some pecuniary loss on the company. *Atlantic Coast Line Ry. v. North Carolina*, 206 U. S. 1.

When goods cease to be subject to interstate commerce. *Heyman v. So. Ry.*, 203 U. S. 270. When, if in carload lots. *Gulf &c. v. Texas*, 204 U. S. 403.

Right of state commission to stop interstate trains at stations. *Mississippi v. Ill. Cent. Ry.*, 203 U. S. 335.

Police Power. Burden upon interstate commerce. *H. & T. Cent. Ry. v. Mayes*, 201 U. S. 321; *McNeil v. So. R. Co.*, 202 U. S. 543; *McLean v. Denver & Rio Grande Ry.*, 203 U. S. 38; *Mississippi v. Ill. Cent. Ry.*, 203 U. S. 335; *Logan v. Postal Tel. Co.*, 157 Fed. R. 570.

Franchises of a corporation chartered by a State are, so far as they involve questions of interstate commerce, exercised in subordination to the power of Congress to regulate such commerce; and while Congress may not have general visitatorial power over state corporations, its powers in vindication of its own laws are the same as if the corporation had been created by an act of Congress. *Hale v. Henkel*, 201 U. S. 43.

Power of Congress to Regulate the Rates of Railways Engaged in Interstate Commerce

There is a governmental power to regulate the operations of railroads acting as common carriers, and, as a part of such regulation, to prescribe the maximum rates which they may charge in the future for the services which they shall render to those who resort to them,

and that the power is vested in and may be exercised by the legislative branch of the government. (Granger cases) *Munn v. Illinois*, 94 U. S. 113; *Ruggles v. Illinois*, 108 U. S. 526, 541; *St. L. & Pac. Ry. v. Illinois*, 118 U. S. 557.

The duty of determining the rates in the future may be delegated to an administrative body and a grant of such power is not a delegation of the legislative authority. *Railroad Commission Cases*, 116 U. S. 307; *Reagan v. Farmers' &c.*, 154 U. S. 362; *I. C. C. v. C., N. O. & Tex. Pac. Ry.*, 167 U. S. 479.

The rate-making power is not a judicial function and cannot be conferred constitutionally upon the courts of the United States, either by way of original or appellate jurisdiction. *Reagan v. Farmers' &c.*, 154 U. S. 362; *I. C. C. v. C., N. O. & Texas Pac. Ry.*, 167 U. S. 479.

The courts have the power to investigate any rate or rates fixed by legislative authority and to determine whether they are such as would be confiscatory of the property of the carrier, and if they are judicially found to be confiscatory in their effect, to restrain their enforcement. *St. L. & S. F. Ry. v. Gill*, 156 U. S. 649; *Smyth v. Ames*, 169 U. S. 466; 164 U. S. 578.

A legislature has power to fix rates, and the extent of judicial interference is protection against unreasonable rates. *Chicago v. Wellman*, 143 U. S. 339, 344; *Stone v. Farmers'*, 116 U. S. 307; *Chicago v. Minnesota*, 134 U. S. 418.

CHAPTER XXI

EMPLOYERS' LIABILITY ACT

An Act Relating to Liability of Common Carriers in the District of Columbia and Territories and Common Carriers Engaged in Commerce Between the States and Between the States and Foreign Nations to Their Employees

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every common carrier engaged in trade or commerce in the District of Columbia, or in any Territory of the United States, or between the several States, or between any Territory and another, or between any Territory or Territories and any State or States, or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, shall be liable to any of its employees, or, in the case of his death, to his personal representative for the benefit of his widow and children, if any, if none, then for his parents, if none, then for his next of kin dependent upon him, for all damages which may result from the negligence of any of its officers, agents, or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways, or works.

SEC. 2. That in all actions hereafter brought against any common carriers to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributory negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. All questions of negligence and contributory negligence shall be for the jury.

SEC. 3. That no contract of employment, insurance, relief benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages for personal injuries to or death of such employee: *Provided, however,* That upon the trial of such action against any common carrier the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit, or indemnity that may have been paid to the injured employee, or, in case of his death, to his personal representative.

SEC. 4. That no action shall be maintained under this Act, unless commenced within one year from the time the cause of action accrued.

SEC. 5. That nothing in this Act shall be held to limit the duty of common carriers by railroads or impair the rights of their employees under the safety-appliance Act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three.

Approved June 11, 1906.

Act of June 11, 1906, Declared Unconstitutional

The test of the power of Congress to regulate commerce is not merely the matter regulated, but whether the regulation is directly one of interstate commerce or is embraced within the grant conferred on Congress to use all lawful means necessary and appropriate to the execution of this power. We do not hold that Congress is without power to regulate the relation of master and servant, to the extent that regulations adopted by Congress on that subject are solely confined to interstate commerce, but this power cannot be lawfully extended so as to include the regulation of the relation of master and servant or of servants among themselves as to things which are not interstate commerce. The face of the Act shows that the power which it asserts extends not only to the relation of master and servant and servants among themselves as to things which are wholly interstate commerce, but embraces those relations as to matters and things domestic in their character, and which do not come within the authority of Congress. The statute deals with all the concerns of the individuals or corporations to which it relates if they engage as common carriers in trade or commerce between the States, etc., and does not confine itself to the interstate commerce business which may be done by such persons. The statute is addressed to the individuals or corporations who are engaged in interstate commerce, and is not confined solely to regulating the interstate commerce business which such persons may do. It regulates the persons because they engage in interstate commerce, and does not alone regulate the business of interstate commerce. The liability to the servant is coextensive with the business done by the employers whom the statute embraces; that is, it is in favor of any of the employees of all carriers who engage in interstate commerce. The Act being addressed to all common carriers and imposing a liability upon them in favor of any of their employees, without qualification or restriction as to the business in which the carriers or their employees may be engaged at the time of the injury, of necessity includes subjects wholly out-

side of the power of Congress to regulate commerce. As the Act includes many subjects wholly beyond the power of Congress to regulate commerce, and depends for its sanction upon that authority, it results that the Act is repugnant to the Constitution and cannot be enforced, and whilst it embraces subjects within the authority of Congress to regulate commerce, it also includes subjects not within its constitutional power, and the two are so interblended in the statute that they are incapable of separation, the statute is repugnant to the Constitution and non-enforceable. *Howard v. Ill. Cent. Ry.*, 207 U. S. 463.

EMPLOYERS' LIABILITY ACT

Passed April 22, 1908

An Act Relating to the Liability of Common Carriers by Railroad to Their Employees in Certain Cases

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

SEC. 2. That every common carrier by railroad in the Territories, the District of Columbia, the Panama Canal Zone, or other possessions of the United States shall be liable in damages to any person suffering injury while he is employed by such carrier in any of said jurisdictions, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its

negligence, in its cars, engines, appliances, machinery, track, road-bed, works, boats, wharves, or other equipment.

SEC. 3. That in all actions hereafter brought against any such common carrier by railroad under or by virtue of any of the provisions of this Act to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: *Provided*, That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

SEC. 4. That in any action brought against any common carrier under or by virtue of any of the provisions of this Act to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risks of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

SEC. 5. That any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this Act, shall to that extent be void: *Provided*, That in any action brought against any such common carrier under or by virtue of any of the provisions of this Act, such common carrier may set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employee or the person entitled thereto on account of the injury or death for which said action was brought.

SEC. 6. That no action shall be maintained under this Act unless commenced within two years from the day the cause of action accrued.

SEC. 7. That the term "common carrier" as used in this Act shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier.

SEC. 8. That nothing in this Act shall be held to limit the duty or liability of common carriers or to impair the rights of their employees under any other Act or Acts of Congress, or to affect the prosecution of any pending proceeding or right of action under the Act of Congress entitled "An Act relating to liability of common carriers in the District of Columbia and Territories, and to common carriers engaged in commerce between the States and between the States and foreign nations to their employees," approved June eleventh, nineteen hundred and six.

Approved April 22, 1908.

CHAPTER XXII

THE SHERMAN ANTI-TRUST ACT TOGETHER WITH A DIGEST OF THE PRINCIPAL DECISIONS OF THE SUPREME COURT RELATING THERETO

Act of July 2, 1890 (26 Stat. 209)

An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States of the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 4. The several circuit courts of the United States are hereby

invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, or the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Anti-trust Amendments to the Wilson Tariff Act of August 27, 1894—Sections 73–77 (28 Stat. 570)

SEC. 73. That every combination, conspiracy, trust, agreement, or contract is hereby declared to be contrary to public policy, illegal, and void, when the same is made by or between two or more persons or corporations either of whom is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in

lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who is or shall hereafter be engaged in the importation of goods or any commodity from any foreign country in violation of this section of this act, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and, on conviction thereof in any court of the United States, such person shall be fined in a sum not less than one hundred dollars and not exceeding five thousand dollars, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months.

SEC. 74. That the several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of section seventy-three of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petitions setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 75. That whenever it shall appear to the court before which any proceeding under the seventy-fourth section of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

SEC. 76. That any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section seventy-three of this act, and being in the course of transportation from one State to another, or to or from a Territory, or the District of Columbia, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SEC. 77. That any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

The Foregoing Sections were Expressly Preserved in the Dingley Act of 1897. Section 34 of that Act (30 Stat. 213) Concludes as Follows:

“And further provided, That nothing in this act shall be construed to repeal or in any manner affect the sections numbered seventy-three, seventy-four, seventy-five, seventy-six, and seventy-seven of an act entitled ‘An act to reduce taxation, to provide revenue for the Government, and for other purposes,’ which became a law on the twenty-eighth day of August, eighteen hundred and ninety-four.”

[32 Stat. 854, 903.]

An Act Making Appropriations for the Legislative, Executive, and Judicial Expenses of the Government for the Fiscal Year Ending June Thirtieth, Nineteen Hundred and Four, and for Other Purposes

* * * * *

That for the enforcement of the provisions of the Act entitled “An Act to regulate commerce,” approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof or supplemental thereto, and of the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety, and all Acts amendatory thereof or supplemental thereto, and sections seventy-three, seventy-four, seventy-five, and seventy-six of the Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” approved August twenty-seventh, eighteen hundred and ninety-four, the sum of five hundred thousand dollars, to be immediately available, is hereby appropriated, out of any money in the Treasury not heretofore appropriated, to be expended under the direction of the Attorney-General in the employment of special counsel and agents of the Department of Justice to conduct proceedings, suits, and prosecutions under said Acts in the courts of the United States: *Provided*, That no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under said Acts: *Provided further*, That no person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

* * * * *

Approved February 25, 1903.

[32 Stat. 1031, 1062.]

An Act Making Appropriations to Supply Deficiencies in the Appropriations for the Fiscal Year Ending June Thirtieth, Nineteen Hundred and Three, and for Prior Years, and for Other Purposes

* * * * *

That under, and to be paid from, the appropriation of five hundred thousand dollars for the enforcement of the provisions of the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof or supplemental thereto, and other Acts mentioned in said appropriation, made in the legislative, executive, and judicial appropriation Act for the fiscal year nineteen hundred and four, the President is authorized to appoint, by and with the advice and consent of the Senate, an assistant to the Attorney-General with compensation at the rate of seven thousand dollars per annum and an Assistant Attorney-General at a compensation at the rate of five thousand dollars per annum; and the Attorney-General is authorized to appoint and employ, without reference to the rules and regulations of the civil service, two confidential clerks at a compensation at the rate of one thousand six hundred dollars each per annum, to be paid from said appropriation. Said assistant to the Attorney-General and Assistant Attorney-General shall perform such duties as may be required of them by the Attorney-General.

* * * * *

Approved March 3, 1903.

United States v. E. C. Knight Company (Sugar Trust)

(156 U. S. 1; U. S. Supreme Court, March 26, 1894; Opin., Fuller, Ch. J., Harlan, J., dissenting.)

It appeared in this case that, by the purchase of the stock of four Philadelphia refineries, through the exchange of shares of its own stock, the American Sugar Refining Company acquired nearly a complete control of the manufacture of refined sugar in the United States. The government charged that the contracts under which these purchases were made constituted combinations in restraint of trade or commerce in refined sugar among the several States and with foreign nations and asked the cancellation of the contracts and the redelivery of the stock.

The government's contention was that the purpose of the purchase was to acquire a substantial monopoly of sugar refining, and as the product was a necessary of life, manufactured for sale and distribution among the several States and in foreign countries, that the

effect of the arrangement was to restrain and monopolize interstate and foreign commerce.

But the Supreme Court held that, conceding a monopoly was created, it was a monopoly in the production of sugar and not in its sale or distribution among the several States. If a monopoly in interstate commerce followed a monopoly in production, it was but indirect and incidental and not within the prohibition of the anti-trust law. It was for the States to regulate production; the authority of Congress was limited to commerce among the States.

"Doubtless," said the chief justice (p. 12), "the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense; and although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly. Commerce succeeds to manufacture, and is not a part of it."

Again, page 16:

"Contracts, combinations, or conspiracies to control domestic enterprise in manufacture, agriculture, mining, production in all its forms, or to raise or lower prices or wages, might unquestionably tend to restrain external as well as domestic trade, but the restraint would be an indirect result, however inevitable and whatever its extent, and such result would not necessarily determine the object of the contract, combination, or conspiracy.

* * * * *

"It was in the light of well-settled principles that the act of July 2, 1890, was framed. Congress did not attempt thereby to assert the power to deal with monopoly directly as such; or to limit and restrict the rights of corporations created by the States or the citizens of the States in the acquisition, control, or disposition of property; or to regulate or prescribe the price or prices at which such property or the products thereof shall be sold; or to make criminal the acts of persons in the acquisition and control of property which the States of their residence or creation sanctioned or permitted. Aside from the provisions applicable where Congress might exercise municipal power, what the law struck at was combinations, contracts, and conspiracies to monopolize trade and commerce among the several States or with foreign nations; but the contracts and acts of the defendants related exclusively to the acquisition of the Philadelphia refineries and the business of sugar refining in Pennsylvania, and bore no direct relation to commerce

between the States or with foreign nations." *Pennsylvania Sugar Refining Co. v. American Sugar Refining Co.*, 160 Fed. R. 144; *American Banana Co. v. United Fruit Co.*, 160 Fed. R. 184.

United States v. Trans-Missouri Freight Association

(166 U. S. 290; Supreme Court, March 22, 1897; Opin., Peckham, J.)

The contract or combination assailed in this case was an agreement among a large number of interstate railways, creating an association and providing a method of fixing rates and fares on competitive interstate freight traffic south and west of the Missouri River. The agreement expressly declared that the association was formed among other things, "for the purpose of mutual protection, by establishing and maintaining *reasonable* rates, etc."

The questions vigorously discussed in the case were whether the anti-trust law applies to railroads, and whether it declares illegal all contracts in restraint of trade, whether reasonable or unreasonable.

The court held that the law does apply to railroads and that it prohibits all contracts in restraint of trade or commerce among the several States and with foreign nations, whether the restraint be reasonable or unreasonable.

Four of the justices—White, Field, Gray and Shiras—dissented in an opinion delivered by Mr. Justice White, upon the ground that the restraint of trade condemned by the statute is an unreasonable restraint, such as was unlawful at common law.

United States v. Joint Traffic Association

(171 U. S. 505; Supreme Court, October 24, 1898; Opin., Peckham, J.)

The Joint Traffic case grew out of an agreement, similar to that in the Trans-Missouri, creating an association to fix rates and fares on competitive interstate traffic east of Chicago. Nine trunk-line systems—the Baltimore and Ohio, the Chesapeake and Ohio, the Erie, the Grand Trunk, the Lackawanna, the Lehigh, the Pennsylvania, the Vanderbilt, and the Wabash—practically controlling the business of railroad transportation between Chicago and the Atlantic seaboard, were covered by the arrangement.

The agreement expressly declared that it was entered into only to establish and maintain "reasonable and just rates, fares, etc.,"

and stated that the powers conferred upon the managers should be so construed and exercised as not to permit the violation of the Interstate Commerce Act or any other applicable law.

In addition to the points discussed in the *Trans-Missouri* case, which counsel for the railroads attempted to reargue, it was insisted that the anti-trust law is unconstitutional.

The court followed its decision in the *Trans-Missouri* case, holding that there was no substantial difference between the *Trans-Missouri* and the joint traffic agreements, and, upon the constitutional question, held that Congress has the power, in regulating interstate commerce carried on by railroad corporations, to say that no contract or combination shall be legal which restrains such trade or commerce by shutting out the operation of the general law of competition.

In this case, as in the *Trans-Missouri*, the court considered it no defense that the rates established or to be established were reasonable. The fact that the creation of the association prevented any real competition between the railway systems involved was held to restrain the trade or commerce carried on by them.

"The natural, direct, and immediate effect of competition," said the court (p. 577), "is, however, to lower rates, and to thereby increase the demand for commodities, the supplying of which increases commerce, and an agreement, whose first and direct effect is to prevent this play of competition, restrains instead of promoting trade and commerce."

Hopkins v. United States

(171 U. S. 578; Supreme Court, October 24, 1898; Opin., Peckham, J.)

This was a bill in equity, filed by direction of the Attorney-General, against Hopkins and other members of the Kansas City Live Stock Exchange, to secure a dissolution of the exchange on the ground that its members were in a combination in restraint of commerce among the several States.

It seems that this exchange was an association of men doing business at the stock yards in Kansas City, part of these yards being in Missouri and part in Kansas. The business of the members was to receive live stock shipped from other States, care for, and sell the same, and account to the owners for the proceeds after deducting charges and expenses. Under the rules members were prohibited from buying live stock from commission merchants in

Kansas City not members of the exchange. The rules also fixed a commission, prohibited the employment of agents to solicit consignments except upon stipulated salary, and forbade the sending of prepaid telegrams or telephone messages with information as to the condition of the markets.

The court held that the business conducted by the members of the exchange was not interstate, but local in character, and therefore decided the case against the government.

Page 588:

"The sale or purchase of live stock as commission merchants at Kansas City is the business done, and its character is not altered because the larger proportion of the purchases and sales may be of live stock sent into the State from other States or from the Territories. Where the stock came from or where it may ultimately go after a sale or purchase, procured through the services of one of the defendants at the Kansas City stock yards, is not the substantial factor in the case. The character of the business of defendants must, in this case, be determined by the facts occurring at that city.

"If an owner of cattle in Nebraska accompanied them to Kansas City and there personally employed one of these defendants to sell the cattle at the stock yards for him on commission, could it be properly said that such defendant, in conducting the sale for his principal, was engaged in interstate commerce? Or that an agreement between himself and others not to render such services for less than a certain sum was a contract in restraint of interstate trade or commerce? We think not. On the contrary, we regard the service as collateral to such commerce and in the nature of a local aid or facility provided for the cattle owner toward the accomplishment of his purpose to sell them, and an agreement among those who render the services relating to the terms upon which they will render them is not a contract in restraint of interstate trade or commerce."

Page 590:

"The selling of an article at its destination, which has been sent from another State, while it may be regarded as an interstate sale and one which the importer was entitled to make, yet the services of the individual employed at the place where the article is sold are not so connected with the subject sold as to make them a portion of interstate commerce, and a combination in regard to the amount to be charged for such service is not, therefore, a combination in restraint of that trade or commerce. Granting that the cattle them-

selves, because coming from another State, are articles of interstate commerce, yet it does not therefore follow that before their sale all persons performing services in any way connected with them are themselves engaged in that commerce, or that their agreements among each other relative to the compensation to be charged for their services are void as agreements made in restraint of interstate trade."

Page 592:

"The contract condemned by the statute is one whose direct and immediate effect is a restraint upon that kind of trade or commerce which is interstate. Charges for such facilities as we have already mentioned are not a restraint upon that trade, although the total cost of marketing a subject thereof may be thereby increased. Charges for facilities furnished have been held not a regulation of commerce, even when made for services rendered or as compensation for benefits conferred."

Anderson v. United States

(171 U. S. 604; Supreme Court, October 24, 1898; Opin., Peckham, J.)

This case was somewhat similar to the Hopkins case, being a bill in equity filed by direction of the Attorney-General against the members of the Traders' Live Stock Exchange of Kansas City to compel its dissolution. The main difference between this exchange and that involved in the Hopkins case was that while the members of the Traders' Exchange were purchasers of live stock on the market, the members of the Live Stock Exchange were only commission merchants who sold the live stock upon commission as a compensation for their services.

The rules of the exchange relied upon by the government as restraining interstate commerce were those which forbade the recognition of any yard trader unless he was a member of the exchange, which required all the members of a partnership to be members of the exchange, which provided that no member of the exchange should employ any person to buy or sell cattle unless such person was a member of the exchange, and which prohibited the payment of any fee to any buyer or salesman for buying cattle from or selling cattle to such party.

Without passing upon the question whether the members of this exchange were or were not engaged in interstate commerce, the court held that the rules objected to were of a character to enforce

the purpose and object of the exchange, and viewed in that light were reasonable and fair. They could affect interstate trade or commerce in but a remote way, and therefore could not be regarded as in restraint of such trade or commerce.

The court (p. 615) restated the rule that where the subject-matter of the agreement does not directly relate to and act upon and embrace interstate commerce, and where the undisputed facts clearly show that the purpose of the agreement was not to regulate, obstruct, or restrain that commerce, but that it was entered into with the object of properly and fairly regulating the transaction of the business in which the parties to the agreement were engaged, such agreement would be upheld as not within the statute.

Addyston Pipe and Steel Company v. United States

(175 U. S. 211; Supreme Court, December 4, 1899; Opin., Peckham, J.)

This case grew out of a combination of six shops, located, one in Ohio, one in Kentucky, two in Tennessee, and two in Alabama, which were engaged in making cast-iron pipe for gas, water, and sewer purposes. These shops controlled the market in that commodity in thirty-six States west of the Allegheny Mountains and south of Virginia. They entered into an agreement to control prices by suppressing competition among themselves. This was done by appointing a representative board of one from each shop, to which all inquiries for pipe were referred. The board fixed the price it thought the job would stand. The job was then sold over the table, the shop which bid the highest bonus for the benefit of the pool getting it. At the public letting, the shop that got the job bid the fixed price, and the other shops overbid in order to deceive the public.

On behalf of the combination it was contended that the power of Congress, under the interstate commerce clause, does not extend to agreements among private corporations, but is limited to acts of interference by the States and by *quasi*-public corporations, such as railroads. Private manufacturing corporations, it was insisted, are not public agencies and cannot be compelled to keep their shops running or sell their goods to any person who applies. In the next place, it was urged that there was no restraint put upon interstate commerce, and that under the decision in the Knight case the creation of a monopoly in the manufacture of a commodity is not prohibited by the anti-trust law.

The Supreme Court held, however, that Congress may prohibit the performance of any agreement between individuals or corporations where the natural and direct effect of it is to regulate or restrain interstate commerce. In other words, the anti-trust law applies to every agreement in restraint of interstate trade, whether made by corporations or individuals.

In the next place the court held that any agreement or combination which directly restrains not only the manufacture but the sale of a commodity among the several States comes within the anti-trust law.

Commenting on the Knight case the court said (page 240):

"The case was decided upon the principle that a combination simply to control manufacture was not a violation of the act of Congress, because such a contract or combination did not directly control or affect interstate commerce, but that contracts for the sale and transportation to other States of specific articles were proper subjects for regulation because they did form part of such commerce."

Loewe et al. v. Lawlor et al.

(148 Fed. R. 924)

208 U. S. 274

(Decided February 2, 1908.)

An action was brought in the Circuit Court for the District of Connecticut, under Sec. 7 of the Anti-trust Act of July 2, 1890 claiming threefold damages for injuries inflicted on plaintiffs by combination or conspiracy declared to be unlawful by the Act.

The complaint alleged that defendants, the United Hatters of North America, collectively known as the American Federation of Labor, combined and conspired, by boycotts and otherwise, to restrain and obstruct the sale of complainant's fur hats among the several States, in violation of Sec. 1 of the Anti-Trust Act.

"In our opinion, the combination described in the declaration is a combination in restraint of trade or commerce among the several States in the sense in which the words are used in the Act, and the action can be maintained accordingly."

The judgments in the following cases were analyzed and held to be decisive of this case, viz.: *United States v. Trans-Missouri Freight Association*, 166 U. S. 290; *United States v. Joint Traffic Association*, 171 U. S. 505; *Northern Securities Company v. United States*, 193 U. S. 197; *Swift & Co. v. United States*, 196 U. S. 395; *Aikens v. Wisconsin*, 195 U. S. 194; *Mulcahy v. Queen*, L. R. 3 H. L. 306;

Addyston Pipe & Steel Co. v. United States, 175 U. S. 211; Montague v. Lowry, 193 U. S. 38; United States v. Workingmen's Amalgamated Council, 26 L. R. A. 158; 54 Fed. R. 994; 57 Fed. R. 85; Re Debs, 158 U. S. 564.

The records of Congress show that several efforts were made to exempt by legislation, organizations of farmers and laborers from the operation of the Act, and all these efforts failed, so that the Act remained as we have it before us.

The Act seems to include all combinations in restraint of commerce, without reference to the character of the persons who entered into them.

Ches. & Ohio Fuel Co. v. United States

(115 Fed. R. 610; April 8, 1902.)

A contract by which a corporation agrees to take the entire output of a number of independent concerns engaged in coal and coke business, intended for interstate shipment, to sell the same at a fixed price and to pay over the proceeds to such producers, said corporation binding itself not to sell the product of competing mines, and to retain for itself a compensation, was held by the court to be illegal and in restraint of interstate commerce and as tending to create a monopoly.

Northern Securities Company v. United States

(193 U. S. 197; March 14, 1904.)

Stockholders of the Great Northern and the Northern Pacific Railway Companies, parallel and competing lines, organized the Northern Securities Company to hold the shares of the stock of the constituent companies, such stockholders in lieu of their stock in those companies to receive shares in the holding corporation.

Suit was brought by the government to enjoin the consolidation under the provisions of the Anti-Trust Act of July 2, 1890.

It was held that this consolidation destroyed competition between the two companies, and that the arrangement was an illegal combination in restraint of trade, and the holding company was enjoined from voting the stock or from exercising any control over the railroad companies, and the railroads were enjoined from paying any dividends to the Northern Securities Company on account of any stock which it holds in either of the aforesaid railroads.

The following propositions are deducible from the opinion of the court in this case:

Although the Anti-Trust Act has no reference to the mere manufacture or production of articles or commodities within the limits of the several States, it embraces and declares to be illegal every contract, combination or conspiracy in whatever form, of whatever nature, and whoever may be parties to it, which directly or necessarily operates in restraint of trade or commerce among the several States or with foreign nations.

The Act is not limited to restraints of interstate and international trade or commerce that are unreasonable in their nature, but embraces all direct restraints, reasonable or unreasonable, imposed by any combination, conspiracy or monopoly upon such trade or commerce.

Railroad carriers engaged in interstate or international trade or commerce are embraced by the Act.

Combinations, even among private manufacturers or dealers, whereby interstate or international commerce is restrained, are equally embraced by the Act.

Congress has the power to establish rules by which interstate and international commerce shall be governed, and by the Anti-Trust Act has prescribed the rule of free competition among those engaged in such commerce.

Every combination or conspiracy which would extinguish competition between otherwise competing railroads, engaged in interstate trade or commerce, and which would in that way restrain such trade or commerce, is made illegal by the Act.

The natural effect of competition is to increase commerce, and an agreement whose direct effect is to prevent this play of competition, restrains instead of promotes trade and commerce.

To vitiate a combination, such as the act of Congress condemns, it need not be shown that such combination, in fact, results, or will result, in a total suppression of trade or in a complete monopoly, but it is only essential to show that by its necessary operation it tends to restrain interstate or international trade or commerce, or tends to create a monopoly in such trade or commerce, and to deprive the public of the advantages that flow from free competition.

The constitutional guarantee of liberty of contract does not prevent Congress from prescribing the rule of free competition for those engaged in interstate and international commerce.

Under its power to regulate commerce among the several States

and with foreign nations, Congress had authority to enact the statute in question.

Congress may protect the freedom of interstate commerce by any means that are appropriate and that are lawful and not prohibited by the Constitution.

If in the judgment of Congress the public convenience or the general welfare will be best subserved when the natural laws of competition are left undisturbed by those engaged in interstate commerce, that must be, for all, the end of the matter, if this is to remain a government of laws, and not of men.

When Congress declared contracts, combinations and conspiracies in restraint of trade or commerce to be illegal, it did nothing more than apply to interstate commerce a rule that had been long applied by the several States when dealing with combinations that were in restraint of their domestic commerce.

Subject to such restrictions as are imposed by the Constitution upon the exercise of all power, the power of Congress over interstate and international commerce is as full and complete as is the power of any State over its domestic commerce.

No State can by merely creating a corporation, or in any other mode, project its authority into other States, so as to prevent Congress from exerting the power it possesses under the Constitution over interstate and international commerce, or so as to exempt its corporation engaged in interstate commerce from obedience to any rule lawfully established by Congress for such commerce; nor can any State give a corporation created under its laws authority to restrain interstate or international commerce against the will of the nation as lawfully expressed by Congress. Every corporation created by a State is necessarily subject to the supreme law of the land.

While every instrumentality of domestic commerce is subject to state control, every instrumentality of interstate commerce may be reached and controlled by national authority, so far as to compel it to respect the rules for such commerce lawfully established by Congress.

Swift and Company v. United States

(196 U. S. 375; January 30, 1905.)

Bill charges a combination, conspiracy and monopoly among defendants in buying live stock and selling fresh meat at the stock yards in Chicago, Omaha and other cities, and prays that defend-

ants be restrained from making and performing contracts and combinations in restraint of trade, the purpose or effect of which is to require their agents to refrain from bidding against each other in the purchase of live stock, or collusively and by agreement to refrain from bidding against each other at the sales of live stock, or fixing uniform prices, or by curtailing the quantity of meats shipped, or in respect to rules of credit to dealers, etc. The injunction was ordered. Upon appeal the case was heard on demurrer to the bill, and the injunction sustained, and it was held that, although the combination alleged embraces restraint and monopoly of trade within a single State, its effect upon commerce among the States is not accidental, secondary, remote or merely probable, and the case is not like *U. S. v. E. C. Knight*, 156 U. S. 1, where the subject-matter of the combination was manufacture, and the direct object monopoly of manufacture within a State. Here the subject-matter is sales, and the very point of the combination is to restrain and monopolize commerce among the States in respect of such sales. In *Hopkins v. U. S.*, 171 U. S. 578, the point decided was that the local business of commission merchants was not commerce among the States. In *Anderson v. U. S.*, 171 U. S. 604, the defendants were buyers and sellers at the stock yards, but their agreement was merely not to employ brokers or to recognize yard traders who were not members of their association, and this combination did not regulate commerce among the States.

Taking up the case at bar, commerce among the States is not a technical, legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one State, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yard, and when this is a typical, constant recurring course, the current thus existing is a current of commerce among the States, and the purchase of the cattle is a part and incident of such commerce. What we say is true at least of such a purchase by residents in another State from that of the seller and of the cattle. See *Norfolk & Western Ry. v. Sims*, 191 U. S. 441.

The sales of stock within the statute are those made at the stock-yards of live stock sent from other States, or bought at those yards for transport to another State.

CHAPTER XXIII

BUREAU OF CORPORATIONS

An Act to Establish the Department of Commerce and Labor

Approved February 14, 1903

SEC. 6. That there shall be in the Department of Commerce and Labor a bureau to be called the Bureau of Corporations, and a Commissioner of Corporations who shall be the head of said bureau, to be appointed by the President, who shall receive a salary of five thousand dollars per annum. There shall also be in said bureau a deputy commissioner who shall receive a salary of three thousand five hundred dollars per annum, and who shall in the absence of the Commissioner act as, and perform the duties of, the Commissioner of Corporations, and who shall also perform such other duties as may be assigned to him by the Secretary of Commerce and Labor or by the said Commissioner. There shall also be in the said bureau a chief clerk and such special agents, clerks, and other employees as may be authorized by law.

The said Commissioner shall have power and authority to make, under the direction and control of the Secretary of Commerce and Labor, diligent investigation into the organization, conduct, and management of the business of any corporation, joint stock company or corporate combination engaged in commerce among the several States and with foreign nations excepting common carriers subject to "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and to gather such information and data as will enable the President of the United States to make recommendations to Congress for legislation for the regulation of such commerce, and to report such data to the President from time to time as he shall require; and the information so obtained or as much thereof as the President may direct shall be made public.

In order to accomplish the purposes declared in the foregoing part of this section, the said Commissioner shall have and exercise the same power and authority in respect to corporations, joint stock companies and combinations subject to the provisions hereof, as is conferred on the Interstate Commerce Commission in said "Act to regulate commerce" and the amendments thereto in respect to common carriers so far as the same may be applicable, including the right to subpoena and compel the attendance and testimony of witnesses and the production of documentary evidence and to administer oaths. All the requirements, obligations, liabilities, and

immunities imposed or conferred by said "Act to regulate commerce" and by "An Act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, supplemental to said "Act to regulate commerce," shall also apply to all persons who may be subpoenaed to testify as witnesses or to produce documentary evidence in pursuance of the authority conferred by this section.

It shall be the province and duty of said bureau, under the direction of the Secretary of Commerce and Labor, to gather, compile, publish, and supply useful information concerning corporations doing business within the limits of the United States as shall engage in interstate commerce or in commerce between the United States and any foreign country, including corporations engaged in insurance, and to attend to such other duties as may be hereafter provided by law.

The law creating the Bureau of Corporations is an exercise by Congress of the authority conferred upon it by the commerce clause of the Constitution, and is a part of the general authority for the regulation of commerce. The Act expressly authorizes the gathering of such information and data as will enable the President to make recommendations to Congress for legislation for the regulation of commerce.

The power vested in Congress to regulate commerce has been held to include the power to prescribe rules for carrying on commercial intercourse. *Gibbons v. Ogden*, 9 Wheat. 1; to establish the rule of free competition among those who engage in it. *Northern Securities Co. v. U. S.*, 193 U. S. 197. To prohibit unjust charges, discriminations or preferences by carriers engaged in interstate commerce, *I. C. C. v. Brimson*, 154 U. S. 447, and to create officials and to authorize them to investigate the whole subject. *I. C. C. v. Brimson*, 154 U. S. 447; *Union Bridge Co. v. U. S.*, 204 U. S. 364.

The Constitution expressly confers upon Congress authority to make all laws which shall be necessary and proper for carrying into execution all powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

The Act creating the Bureau of Corporations and vesting it with its powers has its prototype, in many respects, in the Interstate Commerce Act. Many decisions of the Supreme Court affecting said last-mentioned act are, therefore, of direct application here. The Commission has authority to inquire into the management of the business of interstate carriers, and to investigate the whole subject of interstate commerce conducted by such carriers, and to obtain full and accurate information of all matters involved in the enforcement of the Act. *I. C. C. v. Brimson*, 154 U. S. 447.

The functions of the Commission and the Bureau of Corporations are different, but the object of Congress in each case is the regulation of commerce, and the *Brimson* case expressly confirms the power of Congress to authorize the exercise of such functions.

"An adjudication that Congress could not establish an administrative body with authority to investigate the subject of interstate commerce and with power to call witnesses before it, and to require the production of books, documents, and papers relating to that subject, would go far toward defeating the object for which the people of the United States placed commerce among the States under national control. All must recognize the fact that the full information necessary as a basis of intelligent legislation by Congress from time to time upon the subject of interstate commerce cannot be obtained, nor can the rules established for the regulation of such commerce be effectually enforced otherwise than through the instrumentality of an administrative body representing the whole country, always watchful of the general interests, and charged with the duty not only of obtaining the required information, but of compelling by all lawful methods obedience to such rules."

The several powers expressly delegated to the Bureau of Corporations and to the Commissioner of Corporations, who shall be the head of said bureau, may be enumerated as follows:

- (1) To make diligent investigation into the organization, conduct and management of the business of any corporation, joint stock company, or corporate combination engaged in commerce among the several States and with foreign nations, excepting common carriers, etc., and to gather such information and data as will enable the President to make recommendations to Congress for legislation for the regulation of such commerce.
- (2) To report such data to the President from time to time as he shall require.
- (3) To have and exercise the same power and authority in respect to corporations, joint stock companies and combinations subject to the provisions hereof, as is conferred on the Interstate Commerce Commission in the act to regulate commerce and the amendments thereto in respect to common carriers, so far as the same may be applicable.
- (4) To subpoena and compel the attendance and testimony of witnesses and the production of documentary evidence.
- (5) To administer oaths.
- (6) To gather, compile, publish, and supply useful information

concerning corporations doing business within the limits of the United States as shall engage in interstate commerce, or in commerce between the United States and any foreign country, including corporations engaged in insurance.

- (7) To attend to such other duties as may be hereafter provided by law.

Congress may authorize a commission to obtain information upon any subject which in its judgment it may be important to possess, but the delegation of such power does not make such commission a judicial body, though the exercise of the power conferred may be judicial in its nature. The judicial power of the United States is vested in the Supreme Court and such inferior courts as the Congress may from time to time ordain and establish, and therefore it cannot be vested in a Commission or a Commissioner who is not a court in a constitutional sense. *Chin Bak Kau*, 186 U. S. 193. The Commissioner of Corporations having been vested with powers of investigation only, his functions are not those of a court, though they are *quasi*-judicial in the matter of administering oaths and issuing subpoenas for witnesses and requiring the production of documentary evidence; but the object and purpose of the exercise of this power having been declared, viz., to gather such information and data as will enable the President to make recommendations to Congress for legislation for the regulation of commerce, it was clearly the intent of Congress to provide means of procuring information as a basis for legislation, by an inquisitorial officer fully equipped with the machinery essential to the performance of the imperative duties imposed upon him. His duties are, in some respects, similar to those performed by a referee, examiner, or special commissioner under the order of a court of equity.

Inasmuch as the courts have decided time and again that insurance is not interstate commerce, *Paul v. Virginia*, 8 Wall. 168; *Liverpool Ins. Co. v. Mass.*, 10 Wall. 567; *Hutting v. Mass.*, 183 U. S. 553, the purpose of this clause of the enactment is not clear, it having no vitality or force, and the bureau will, most likely, not undertake to exercise any power in this respect, in the present state of the law.

The Sherman Anti-Trust Act is a regulation of commerce and prescribes the rule of free competition among those who engage in it. *Northern Securities v. U. S.*, 193 U. S. 197; *U. S. v. Addyston Pipe Co.*, 175 U. S. 211. Therefore the Commissioner has the right to exercise the inquisitorial powers conferred upon him for the purpose of securing information and data as to the operation of this law.

After the Commissioner has reported the information and data

collected, his functions are at an end, and he has no authority to institute or conduct legal proceedings on account of any violations of the law his inquiries may have discovered, but the information and data obtained may be used, in proper cases, for the prosecution of offenders. *U. S. v. Armour & Co.*, 142 Fed. R. 808.

The data and information obtained by the Commissioner is private until it, or so much thereof as the President may direct, be made public. It is in the discretion of the President to give information to the public, i. e., for the use or enjoyment of the community and the public at large. As to the discretionary power of the President, see *Marbury v. Madison*, 1 Cranch, 137. In collecting the information and data, much that is of a private nature, and of no advantage whatever to the public, is unavoidably obtained, and mainly for the purpose of protecting the private affairs of individuals where publicity might be harmful, Congress has intrusted the disposition of the data to the discretion of the President by the express terms of the Act. The information and data so obtained by the Commissioner, being of a private and confidential nature, until made public by the President, the hearings before the Commissioner are necessarily private and could not be made public upon the request of either party, as is the case in proceedings before the Interstate Commerce Commission.

There are no rules or methods indicated in the act by which the Commissioner shall be guided or to which he is required to conform in his investigations, and he has, therefore, great latitude in this respect, but not to the extent of an invasion of the constitutional rights of the citizen. *Kilbourn v. Thompson*, 103 U. S. 168; *Boyd v. U. S.*, 116 U. S. 616. He should avoid the purely private affairs of an individual unless it affirmatively appears that such investigation has in view the accomplishment of some lawful purpose. The subject-matter of the investigation should be one over which Congress has jurisdiction and with reference to which it may take lawful action, and one which the law authorizes the Commissioner to investigate. The evidence sought should be material and relevant to the subject-matter under investigation, but the Commissioner cannot be hampered by those narrow rules which prevail in trials at common law. *I. C. C. v. Baird*, 194 U. S. 25; *I. C. C. v. Brimson*, 154 U. S. 447.

In this connection it should be noted that the Commissioner is authorized to investigate the business of any corporation, joint stock company or corporate combination, and not that of private individuals or partnerships.

It must also appear that the concern investigated is engaged in commerce among the several States *and with foreign nations*. It was probably the intent of Congress to give the Commissioner authority to investigate any corporation, joint stock company or corporate combination engaged in interstate *or* foreign commerce, but a literal reading of the statute conveys the impression that the concern investigated must be engaged in both interstate and foreign commerce as a jurisdictional test of the Commissioner's authority.

There is no authority under this law to investigate the business of a common carrier subject to the Interstate Commerce Act.

The power given to Congress to regulate interstate commerce does not carry with it any power to destroy or impair the guarantees of the Constitution, which provide that "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated," and "no person shall be compelled in any criminal case to be a witness against himself." *Kilbourn v. Thompson*, 103 U. S. 168; *Boyd v. U. S.*, 116 U. S. 616; *I. C. C. v. Brimson*, 154 U. S. 447; see "Immunity of Witnesses," *infra*.

United States v. Armour & Co.

(142 Fed. R. 808.)

The primary purpose of the Act was to enable Congress, by information secured through the work of officers charged with the execution of that law, to pass such remedial legislation as might be found necessary for the control of corporations. The secondary purpose of the Act might have been the punishment of offenders.

The Act surrounds the Commissioner with no forms, puts no legislative limits upon his methods, and it does not require public hearings. The Act contemplates that hearings should be private.

The Commissioner of Corporations has the same powers with respect to other interstate corporations as the Act to regulate commerce and its amendments give to the Interstate Commerce Commission over common carriers so far as the same shall be applicable.

The immunity acts and each of them is a substitute for the privilege contained in the Fifth Amendment to the Constitution. Congress, in furnishing a substitute for this great right of the citizen, must give something as broad as the privilege taken away. The privilege must be claimed by the witness at the time. The immunity flows to the witness by action of law and without any claim on his part.

The Commissioner of Corporations has power to compel, and when he makes his demand it is the duty of the witness to obey, and he may be punished for his refusal to answer his lawful requirement. The witness, in order to get immunity, does not have to wait until the compulsion becomes irresistible. The law puts no premium on contumacy.

If defendant volunteers nothing, but gives only what is demanded by an officer who had the legal right to make the demand in good faith under a sense of legal compulsion, having no legal right to refuse, under such circumstances he answers under compulsion of the law and is entitled to immunity under the Act.

The subpoena is not necessary where the person is present in court or within the verge of the court. Legal compulsion does not depend upon subpoena or oath.

Immunity in such cases does not extend to corporations, but protects individuals, the officers of corporations.

NOTE. — Following this decision, Congress enacted that "immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath." Approved June 30, 1906.

INDEX

INDEX

References are to pages.

ABET OR AID—

carrier to discriminate, 17, 73.

ABSORPTION OF CARRIERS—

by another carrier, 196.

ACCESS TO RECORDS OF CARRIERS, 6, 103.

ACCIDENTS—

charges accruing on account of, 259.

ACCIDENT REPORTS—

carriers must make, 136.

failure to make, penalties, 136.

not used in evidence, 136.

ACCOUNTS—

must be uniform, 6, 102.

may be examined by special agents, 6, 103.

other than those prescribed by Commission, 13, 103.

Commission may prescribe form of, 103.

ACCRUED CLAIMS—

limitation on, 24, 87, 97.

ACT—

when effective, 99, 115.

ACT TO REGULATE COMMERCE, 26.

ACTIONS—

jurisdiction of, 70.

ADJACENT FOREIGN COUNTRY, 26.

definition of, 31.

ADJOURNMENTS—

under rules of practice, 323.

ADMINISTRATIVE RULINGS AND OPINIONS, 211.

round-trip excursion fares, 211.

limited to a designated period, 211.

round-trip tickets, 212.

change in rates, 213.

joint fare greater or less than sum of locals, 214.

reduction to equal, 214.

References are to pages.

ADMINISTRATIVE RULINGS AND OPINIONS—continued.

- through rate or fare higher than sum of locals, 215.
- new roads, 215.
- amend tariffs on less than statutory notice, 214.
- change to meet competition, 216.
- amendment of tariff on less than thirty days' notice, 216.
- division of joint rates, 217.
- diverting traffic, 217.
- blockades, 217.
- equalizing rules, 218.
- free transportation, 218, 219, 220, 221.
- party fare tickets, 222.
- circus outfits, ruling on, 222.
- routing freight, 222.
- overcharges, 223.
- maximum rates not specific, 225.
- combinations of rates, 225.
- combination of joint rate and local rate, 226.
- how to "meet the rate," 226.
- reconsignments, 227.
- carrier cannot be given preferential rates, 227.
- astray shipments, 227.
- federal troops, 228.
- explosives, 228.
- minimum carloads, 228.
- shipments refused by consignee or damaged in transit, 229.
- correspondence, 231.
- distribution of official circulars, 231.
- mailing list, 231.
- special reparation on informal complaints, 231.
- demurrage charges, 232.
- reparation only on basis of published rate, 233.
- limitations, 233.
- refunds and commissions, 235.
- responsibilities under tariff, 234.
- unlawful incorporation of carrier in tariff, 236.
- extensions of time, 236.
- stop-over privileges, 236.
- withdrawal of tariff, 236.
- ocean carriers, 237.
- export and import tariffs, 237.
- maxima rules, 238.
- special circular No. 6, 238.
- Express Tariff Circular No. 16-A, 272.
- as to express companies generally, 296.

ADVANCE IN RATES—

- carrier must justify, 38.
- because business of shipper is prosperous, 38.
- concerted, 84.

References are to pages.

ADVANCE IN RATES—continued.

re investigation, 315.

AGENT—

to file tariff, 174.

authority and concurrence in passenger fare schedules, 198.

appointment of, under passenger schedule, 201.

AGREEMENT—

to own and operate a railroad, 27.

must be filed, 65.

to prevent continuous carriage, 69.

AID OR ABET—

in violation of Act, 73.

ALLOWANCES TO SHIPPERS, 6.

for service rendered or instrumentality furnished, 84, 85.

ALLOWANCES TO ELEVATORS BY U. P. RY.—

re investigation, 316.

ALLOWANCES TO TERMINAL RAILROADS—

re investigation, 316.

ALTERATION OF RECORDS, 13, 104.

AMENDMENT OF TARIFF—

on less than thirty days' notice, 167, 215, 216.

AMENDMENTS—

do not affect pending causes, 114.

to passenger fare schedules, 195

to rule 7, Circular 15-A, 242.

to rule 8, Circular 15-A, 243.

to rules 9 and 38, Circular 15-A, 243.

to rule 11, Circular 15-A, 244.

to rule 37, Circular 15-A, 244.

to rule 38, Circular 15-A, 244.

to rule 39, Circular 15-A, 244.

to rule 82, Circular 15-A, 245.

to express tariff, 279.

to Anti-Trust Act, 347, 349.

under rules of practice, 323.

ANACOSTIA AND POTOMAC RIVER RY. CO.—

Street Railway Acts, 151.

ANALYSIS OF ACT, 1.

structure and organization, 3.

powers delegated to Commission, 5.

duties of common carrier, 7.

limitations upon common carrier, 10.

procedure before Commission, 14.

procedure in the courts, 17.

procedure in the courts, Elkins Act, 22.

miscellaneous provisions, 23.

References are to pages.

ANNUAL REPORTS (see REPORTS)—

as evidence, 90.

Commission may require from carriers, 102.

of Commission to Congress, 110.

ANSWER—

carrier must within specified time, 14, 25.

depositions taken after, 77.

when carrier fails to file, 81.

under rules of practice, 322.

ANTI-TRUST ACT—

general provisions, 346.

APPEAL—

suits to enforce order for payment of money, 20, 89.

under Expediting Act, 20, 123.

orders other than to pay money, 21, 89.

on injunctions, 21, 89.

in suits for departure from published rates, 21, 119.

under Elkins Act, 23, 119.

conditions of, 44.

excessive penalties, 44.

who to pay costs, 87.

from interlocutory order, 90.

shall have precedence, 90.

to Supreme Court from final decree of Circuit Court, 123.

under Arbitration Act, 143.

APPLICATION—

for rehearing, 16, 99.

ARBITRATION ACT—

general statutes, 140.

tenth section declared unconstitutional, 147.

ARRANGEMENTS—

relating to traffic, filed, 7, 65.

copies must be filed, 65.

ARTIFICIAL GAS, EXCEPTED, 26.

ASH PAN ACT, 130—

when effective, 130.

locomotives must have, 130.

penalties, 130.

Commission to enforce, 130.

ASSIGNMENT OF CLAIMS, 70.

ASTRAY SHIPMENTS—

ruling on return of, 227.

demurrage charge, 252.

as to express companies, 303.

References are to pages.

ASSISTANT TO THE ATTORNEY-GENERAL—
under Sherman Anti-Trust Act, 350.

ATTORNEYS—
may have pass, 27.
local not entitled to free pass, 32, 269.
no exchange of passes, 33.

ATTORNEY'S FEE—
carrier liable for, 17, 70, 87.
under Sherman Anti-Trust Act, 347.

ATTORNEY-GENERAL—
to direct proceedings, 6, 119.
consent to employment of special counsel, 16, 88.
to prosecute all suits for the enforcement of the Act, 17, 76.
suits to recover forfeitures in case of rebates, 20, 88, 117.
direct proceedings, 77.
to proceed to collect for forfeitures under Elkins Act, 118.
to file certificate under Expediting Act, 123.
to expend appropriation, 349.

AUTOMATIC COUPLERS—
Safety Appliance Acts, 125.

AUTOMATIC SIGNALS—
under Safety Appliance Acts, 129.

AWARD—
under Arbitration Act, 142.

AWARD OF DAMAGES—
on report of Commission, 82.
after hearing on a complaint, 87.

BAGGAGE—
free with mileage tickets, 111.

BAGGAGE AGENTS—
may have free pass, 27.

BAGGAGE COMPANIES—
as to free pass for, 269.
re investigation, 316.

BASING POINTS, 56.

BASING RATES—
must be specific, 165.

BASING TARIFFS—
express companies, 276.

BELT RAILROADS—
subject to Act, when, 135, 267.

References are to pages.

BILL OF LADING—

- carrier must issue, 9, 24, 105.
- liable for loss or damage, 9, 106.
- not vitiated by Act, 50.
- rate in, lower than the published, 74.
- re investigation, 316.

BILLING BOOK—

- for fast freight lines, 178.

BLOCKADES—

- diversion of traffic, 217.
- by flood, ruling, 265.
- as to express companies, 300.

BOATS—

- whether carriers, 260.

BOOKS AND PAPERS—

- may compel production, 72, 76.

BREAK OF BULK—

- section 7, statute, 69.

BRIDGES AND FERRIES—

- included in "Railroad," 23, 26.
- in Hours of Service Act, 137.

BRIEFS—

- printing, 254.
- under rules of practice, 326.

BULK—

- break of, statute, 69.

BULLETIN NO. 1—

- conference rulings, 247.

BULLETIN NO. 2—

- conference rulings, 260.

BURDEN OF PROOF—

- upon complainant, 81.
- upon carrier, 81.

BUREAU OF CORPORATIONS—

- general provisions, 302.

BUREAU OF INSULAR AFFAIRS—

- when employees entitled to free pass, 35.

CANADIAN RATES—

- ruling on, 251.

CANCELLATIONS—

- must be specified, 166, 194.

References are to pages.

CANCELLATIONS—continued.

- must be by agent, 166.
- old rate must be cancelled, 256, 261.

CAPITAL TRACTION COMPANY—

- Street Railroad Act, 151.

CARETAKERS—

- live stock, 27.
- poultry, 27.
- fruit, 27.
- may have free pass, 34.
- when entitled to pass, 35.
- free pass ruling, 218, 247.
- includes vegetables, 218.
- of milk, ruling, 250.
- trip passes, 254.

CARLOAD AND LESS THAN CARLOAD RATES—

- assembling packages, 49.

CARLOADS, MINIMUM—

- ruling on, 228.

CARLOAD SHIPMENTS—

- by express companies, 298.

CARRIER—

- to whom the Act applies, 4, 26.
- specific enumeration of, 4, 26, 29.
- field of operation, 4.
- cannot transport certain commodities, 10, 28, 42.
- liable for costs, damages and attorney fees, 17, 70.
- liability of, for property received for transportation, 24, 105.
- may recover from other carriers, 24, 105.
- cannot refuse transportation, 41.
- must provide facilities for, 7, 41.
- means "common carrier," 24, 66.
- cannot transport unless schedules filed, 66.
- shall issue receipt or bill of lading, 105.
- must settle claims promptly, 109.
- participating in Interstate Commerce, 132.
- liability under Arbitration Act, 140.
- cannot be given preferential rates, 227.
- damaged or destroyed, 240.
- repairs by shipper, 250.

CARS, PRIVATE—

- defined, 242.

CAR SHORTAGE—

- carrier must pro rata supply on hand, 55.
- re investigation, 316.

References are to pages.

CARTAGE—

- in connection with business of carrier, 54.
- included in schedules, 66.

CASES NOT SUSTAINED BY THE COURTS—

- list of, 318.

CASES SUSTAINED BY COURTS—

- list of, 317.

CEASE AND DESIST—

- Commission may order carriers to, 15, 83.

CHAINS—

- use of, unlawful, 133.

CHANGES—

- in rates, 213.
- exceptions allowed, 213.
- on short notice, 217.

CHANGES IN SCHEDULES, 5, 65, 66, 213, 217.

CHARITABLE SOCIETIES—

- free carriage for, 27, 110.

CHARTERING TRAINS—

- ruling on, 265.

CIRCUIT COURT—

- petition for enforcement of order to pay money, 16, 87.
- costs, 16, 87.
- petition for enforcement of orders other than to pay money, 16, 89.
- petition to enforce order of Commission, 87.

CIRCULARS—

- tariff No. 15-A, 159.
- special, 159.
- announcing compliance with order of court, 176, 200.
- distribution of, 231.
- special No. 6, 238.
- provisions of, 238.
- express tariff No. 16-A, 272.

CIRCUS AGENTS—

- not entitled to free pass, 34.

CIRCUS OUTFITS—

- ruling on, 222.

CITY AND SUBURBAN RAILWAY OF WASHINGTON—

- Street Railway Acts, 151.

**CIVIL PROCEDURE IN THE COURTS IN AID OF THE ORDERS OF
THE I. C. C.**

- commencement of proceedings, 17, 72, 76, 87, 89, 119.

References are to pages.

CIVIL PROCEDURE IN THE COURTS IN AID OF THE ORDERS OF

THE I. C. C.—continued.

- mandamus, 20, 89, 105, 113.
- venue of suits, 17, 88, 89, 119.
- forfeitures, 20, 88, 118.
- service of process, 18, 87, 89, 118.
- appeal, 20, 89, 123.
- enforcement of order, 18, 19, 87, 89.
- precedence of cases, 21, 89, 123.
- compulsory process, 19, 23, 72, 76, 121.

CLAIMS—

- limitation of, 87.
- for reparation, must be filed with Commission, 93.
- prompt settlement required, 109.
- delivering carrier must investigate before paying, 249.
- adjustment of, 261.

CLASSIFICATION—

- must be based upon a real distinction, 38.
- generally, 56.
- schedules must show, 64.
- regulations governing, 159, 160.
- filing of, 174.
- numbers of, 177.
- may be issued by joint agent, 178.

CLASS RATES—

- must carry notation, etc., 175.

CLASS AND COMMODITY RATES TO TEXAS—

- re investigation, 316.

CLEANING IN TRANSIT—

- ruling, 242.

COAL—

- for steam purposes, ruling, 253.
- transportation of, north of Ohio and east of Mississippi, re investigation, 315.

COAL AND MINE SUPPLIES—

- re investigation, 316.

COLORED PERSONS—

- separate cars for, 50.

COMBINATIONS—

- for pooling freights, 11, 63.
- to prevent continuous carriage, 69.

COMBINATION OF JOINT RATE—

- to common points and local rate beyond, 226.

COMBINATION RATES, 164, 165, 175.

References are to pages.

COMMISSION (see INTERSTATE COMMERCE COMMISSION)—
consists of seven members; four quorum, 4.
cannot establish general rate schedules, 37.

COMMISSIONS—
on imports, ruling, 248.

COMMISSIONS AND REFUNDS—
ruling on, 234.

COMMISSIONS ON TICKETS—
re investigation, 315.

COMMISSIONERS (see INTERSTATE COMMERCE COMMISSION)—
may administer oaths, 4, 100.
may sign subpoenas, 4, 100.
vacancies, 4, 76, 100.
may prosecute inquiry, 4, 101.
qualifications of, 4, 76, 100.
how appointed, 4, 76, 100.
term of office, 4, 76, 100.
salary of, 4, 76, 100.
removal of, 4, 76, 100.

COMMODITY CLAUSE—
railroads prohibited from transporting, 28, 42.

COMMODITY RATES—
index to, 162.
must be specific, 166.
only lawful rate, 166.
take precedence over class rates, 175.
take it out of classification, 265.
express companies, 277.

COMMON CARRIER (see CARRIERS)—
what term includes, 23.
meaning under Ash Pan Act, 130.
defined under Employers' Liability Act, 345.

COMMON CONTROL, ETC., 26.
through routing, test of, 30.
construction of, 31.
test of jurisdiction, 32.

COMMON LAW—
statutes changing, 131.

COMMON POINTS—
term cannot be used, 165.

COMMUNITY OF INTERESTS—
re investigation, 315.

COMMUTATION TICKETS—
at reduced rates, 110.
use of in interstate journey, 251.

References are to pages.

COMPETITION—

- in determining rates, 52.
- creates dissimilar conditions 52, 61.

COMPLAINTS OF PERSONS DAMAGED, 5, 17, 72, 80.

- forward same to carriers, 6, 24, 80.
- to investigate same, 6, 76, 80.
- limitation on, 24, 87.
- to the Commission, 72.
- or bring suit, 72.
- what it should state, 78, 80, 92.
- who may file, 80.
- of unjust rate, 83.
- as to allowances, 84.
- rules of practice, 322.

COMPLIANCE WITH ORDERS—

- carrier must, while in effect, 88.
- failure to, under sec. 15, 88.
- under rules of practice, 327.

COMPULSORY ATTENDANCE—

- of witnesses, 121.
- immunity of, 121.

COMPULSORY PROCESS—

- disobedience to subpoena, 19, 77.
- under Elkins Act, 23, 118.
- may compel directors, etc., to attend and testify, 72.
- produce books and papers, 72, 76.

CONCESSIONS—

- giving or receiving prohibited, 13, 116.
- under Elkins Act, 116.

CONCLUSIONS OF THE COMMISSION—

- report must state, 82.

CONCURRENCE—

- in joint tariffs, 5, 65, 67.
- evidence of must be filed, 7, 65, 174, 179.
- in joint rates, 67.
- forms of, 181, 182, 183, 184, 186, 204, 206, 207.
- filing, 185, 186, 206, 207.
- numbers of, 187, 209.
- revocation of, 187, 209.
- consolidated, regulations governing, 198
- under passenger tariff, 202.
- of express companies, 286.

CONFERENCE RULINGS, 32.

- free pass, 32.
- Bulletin No. 1, 247.
- Bulletin No. 2, 260.

References are to pages.

- CONFISCATORY RATES**, 339.
courts have power to investigate, 341.
- CONFLICTING AUTHORITY**—
must be avoided, 188.
- CONFLICTING LAWS**—
repealed, 114.
in Elkins Act, repealed, 120.
- CONNIVANCE OF CARRIER**, 74.
- CONSOLIDATION OF CARRIERS**—
re investigation, 315, 316.
- CONSPIRACY AGAINST UNITED STATES**—
indictment for, 75.
- CONSTITUTIONAL PROVISIONS**—
as to power of Congress over commerce, 332.
- CONSTRUCTION OF ACT TO PROMOTE COMMERCE**, 29.
must adopt English Railway Acts, 29.
not to abridge common law rights of carriers, 29.
- CONSTRUCTION OF STATUTES**, 131.
- CONTEMPT**—
failure to obey order, 19, 77.
before the Commission, 79.
- CONTINUING VIOLATIONS**—
separate offense, 88.
- CONTINUOUS CARRIAGE**, 26, 69—
to combine to prevent, 11, 69.
- CONTRACTS**—
in relation to traffic, must be filed, 7, 65.
for pooling, prohibited, 11, 63.
prima facie evidence, 14, 90.
to own and operate a railroad, 27.
for rates, weight as to reasonableness, 38.
in marine insurance, 42.
for transportation, validity of, 48.
for less than regular rates, 66.
as evidence, 68.
to prevent continuous carriage, 69.
copies of evidence, 90.
statutory law forms part of, 120.
to maintain established rates, illegal, 120.
for division of joint rates, must be filed, 217.
with telegraph or telephone companies must be filed, 221.
for division of joint rates by express companies, 300.

References are to pages.

CONTRACTORS—

may have free pass, 219.

CONTRIBUTORY NEGLIGENCE—

under Employers' Liability Act, 342, 345.

COPIES OF PAPERS—

under rules of practice, 327.

COPIES OF, FOR EVIDENCE—

schedules, 14, 90.

tariffs, 14, 90.

contracts, 14, 90.

reports, 14, 90.

CORN AND CORN PRODUCTS—

re investigation, 316.

CORPORATIONS—

bureau of, 362.

CORRESPONDENCE—

carriers should designate official, 231.

quotations from, 252.

CORRESPONDENCE SCHOOLS—

representatives cannot have pass, 33.

agents cannot have pass, 219.

COSTS—

petitioner not liable for unless upon his appeal, 16, 87.

of suits, how paid, 17, 77.

when carrier liable for, 17, 70.

on petition to Circuit Court to enforce order, 87.

for prosecuting forfeitures, 89.

COUNSEL, SPECIAL—

Commission may employ, 16, 88.

COUPLER—

each must be operative, 133.

carriers responsible for defective, 134.

CRIMINAL ACT—

party must know in advance whether it is criminal or not, 338.

CRIMINAL ACTIONS—

proceedings to recover statutory penalties, 134.

CRIMINAL PROVISIONS—

free pass, 27, 36.

rebates, special rates and drawbacks, 10, 13, 48, 116, 118, 120.

false entries, 13, 104.

unjust and unreasonable charges, 10, 12, 25, 48, 73.

transporting commodities in which interested, 28, 42.

References are to pages.

CRIMINAL PROVISIONS—continued.

- switch connections, 5, 7, 28, 29, 41.
- undue preference or advantage, 10, 54, 55.
- facilities for interchange of traffic, 54, 58.
- long and short haul, 5, 60.
- pooling of freights, 11, 63, 75.
- file schedules, 5, 7, 11, 66, 68.
- change in rates, 5, 213, 249.
- to prevent continuous carriage, 11, 26, 69.
- for any violation of Act (sec. 10).
- unjust discriminations, 12, 25, 48, 49, 73, 74.
- false billing, classification, weighing, report of weight, contents of package, 12, 73, 74.
- transportation at less than regular rates, 68, 74, 117, 213.
- solicitation to discriminate, 13, 17, 74.
- contempt, 19, 79.
- failure to obey order of Commission, 16, 88, 91.
- failure to file reports, 6, 8, 10, 105, 110.
- failure to keep accounts, 6, 13, 102.
- failure to submit accounts to inspection, 6, 13, 102.
- failure to keep proper accounts, 13, 102.
- examiner divulging facts, 23.
- joint interchangeable mileage tickets, 9, 13, 111.
- corporation liable if officer is, 116.
- failure to file and publish tariffs, 13, 50, 94, 116, 159, 174, 198, 266.
- rebate, concession or discrimination, 10, 13, 48, 116, 118, 120.
- departure from rates, 11, 22, 116.

CRIMINATING TESTIMONY, 72.

CUSTOMS DUTIES—

- unless schedules published, 65.

CUSTOMS INSPECTORS—

- may have free pass, 27, 34.

DAMAGES—

- may be satisfied by carrier, 14, 80.
- award of, 14, 82, 87.
- carriers liable to person injured, 17, 70.
- claim for, where presented, 17, 72.
- carriers liable jointly and severally, 17, 74.
- limitation, 24, 97.
- carrier liable for, 70.
- measure of, 70.
- claims for, assignable, 70.
- jurisdiction of actions, 70.
- on complaint to the Commission, 72.
- complaint not dismissed for want of, 80.
- must be stated in report, 82.
- award of, upon hearing, 87.
- joint plaintiffs may sue joint defendants, 87.

References are to pages.

DAMAGES—continued.

- in proceeding under Elkins Act, 119.
- under Employers' Liability Act, 342, 345.

DAMAGED OR DESTROYED CARS—

- may transport free, 241.

DECISION—

- report and conclusions, 14, 82.
- publication of, 82.

DELIVERING PROPERTY—

- wholly within a State, 26.

DEMURRAGE—

- no waiver of charges, 43.
- why imposed, 43.
- ruling on, 232, 264.
- ruling, Supplement No. 1, 240.
- on privately owned cars, 241, 242.
- resulting from strikes, 248.
- on astray shipments, 252.
- charges must be collected, 253.
- accrued charges, 254.
- jurisdiction over, 257.

DEMURRAGE ON PRIVATE TANK CARS—

- re investigation, 316.

DEMURRER—

- notice in nature of, 322.
- finding liberally construed, 91.

DEPARTURE FROM PUBLISHED RATES—

- prohibited, 11, 116, 118.
- venue of suits, 18, 118.

DEPOSITIONS, 6, 76.

- may be taken at any stage, 14, 77.
- witnesses may be compelled to testify, 14, 77.
- Commission may order, 77.
- before whom taken, 78.
- notice of, 78.
- compelled to attend, 78.
- when in foreign country, 78.
- under rules of practice, 324.

DEPOT—

- schedules must be posted in, 64.

DESTITUTE AND HOMELESS PERSONS—

- free carriage, 110.

DETOURED TRAINS—

- tariff must be applied, 218.

References are to pages.

DEVICES—

- prohibited, 10, 48.
- to refund prohibited, 66.

DIFFERENTIALS—

- between grain and grain products, 56.
- between competitive cities, 56.
- from same coal district, 58.

DIFFERENTIAL FREIGHT RATES—

- re investigation, 316.

DIFFERENTIALS TO ATLANTIC PORTS—

- re investigation, 316.

DIGEST OF CASES, 26.

DISADVANTAGE OR PREJUDICE—

- declared unlawful, 54.

DISCRIMINATE—

- carriers shall not between connecting lines, 54.
- induce a carrier to, 13, 17, 73.

DISCRIMINATION (see UNJUST DISCRIMINATION)—

- giving or receiving prohibited, 13, 116.
- venue of suits, 17, 18, 87, 89.
- under Elkins Act, 116, 119.

DISCRIMINATING BETWEEN CONNECTING LINES—

- prohibited, 11, 54.

DISOBEDIENCE OF ORDER—

- other than to pay money, 89.

DISOBEDIENCE TO SUBPŒNA—

- Commission may have aid of court, 77.

DISPARITY IN RATES—

- not undue discrimination, 61.

DISSIMILAR CIRCUMSTANCES AND CONDITIONS—

- in long and short haul, 60.

DISTANCE TARIFF—

- when used, 170.
- other requirements, 170.

DISTRIBUTION OF CARS—

- subject analyzed and decided, 56.

DISTRICT ATTORNEYS—

- to institute suit, 17, 76.
- to prosecute for recovery of forfeiture, 88.
- to proceed under Elkins Act, 119.
- duties under Hours of Service Law, 138.

References are to pages.

- DISTRICT OF COLUMBIA—
 - venue of suit, 18, 90.
 - Street Railway Acts, 151.
- DIVERSION CHARGES—
 - must be shown in tariff, 169.
- DIVISION—
 - of proceeds of sale to pay freight, 254.
- DIVISION OF EARNINGS—
 - prohibited, 11, 63.
- DIVISION OF JOINT RATES—
 - Commission may make order, 15, 83, 164
 - contracts must be filed, 217.
- DIVISION OF RATES—
 - Commission may apportion, 83, 164.
- DIVULGING FACTS—
 - examiners forbidden, 23, 104.
- DOCUMENTARY EVIDENCE—
 - witnesses compelled to produce, 14, 76.
- DRAWBACKS—
 - prohibited, 10, 48.
- DRAWBARS—
 - standard height of, 126.
- DRAYAGE CHARGES—
 - refund for misrouting, 251.
- DRIVING-WHEEL AND TRAIN BRAKES—
 - Safety Appliance Act, 125.
- DUTIES OF COMMON CARRIERS—
 - specific enumeration of, 7
- EARNINGS—
 - division of, prohibited, 11, 63
- EATING HOUSES—
 - operated by carriers, 266.
- EDITORS OF NEWSPAPERS—
 - not entitled to free pass, 34.
- ELECT—
 - complainant must elect method of procedure, 17, 72.
- ELEVATION—
 - included in "transportation," 24, 27
 - of grain defined, 42.

References are to pages.

ELKINS ACT—

- venue of suits, 18, 117, 119.
- appeals under, 21, 119.
- procedure under, 22, 116.
- petition, 22, 116, 119.
- general provisions, 116.

ELECTRICAL POWER—

- tariffs on, ruling, 247.

EMPLOYEES—

- may have free pass, 27.
- definition of, 28.
- under Safety Appliance Acts, 127.
- in Hours of Service Act, 137.
- construction of under Arbitration Act, 140.
- ruling on free pass, 219.
- dead body, free transportation, 250.
- free pass when on leave, 257.

EMPLOYERS' LIABILITY ACT—

- statutes and construction, 342, 344.

EMPTY CARS—

- under Safety Appliance Act, 134.

ENFORCEMENT—

- order to pay money, 16, 87.
- under Elkins Act, 22, 118.

ENFORCEMENT OF ORDERS OTHER THAN TO PAY MONEY—

- on petition to Circuit Court for injunction or other proper process, 16, 89, 104.

ENFORCEMENT OF PENALTIES—

- see analysis of Act, 7, 8, 9, 10, 11, 12, 13.

ENGLISH RAILWAY ACTS—

- must be adopted for purposes of construction, 29.

ENID AND ANADARKO RY.—

- right of way for, 129.
- safety signals, 129.

ENTERTAINMENTS—

- by carrier, ruling on, 234.

EQUAL FACILITIES—

- for interchange of traffic, 7, 54.

EQUALIZING TARIFFS—

- are unlawful, 218.

EQUIPMENT—

- whether it can be diverted, 39.
- under Safety Appliance Act, 125.
- must be kept in order, 134.

References are to pages.

EQUITY—

- may enjoin schedule of rates, 71.
- may administer new remedies, 71.

ESTOPPEL—

- Commission's duty as to, 81.

EVIDENCE—

- testimony, when taken, 14, 77.
- by deposition at any stage, 14, 77.
- witnesses may be compelled to testify, 14, 78.
- extracts from tariffs, contracts, etc., 14, 68.
- findings of fact prima facie, 87, 97.
- copies of schedules, etc., prima facie, 90.
- accident reports not used as, 136.
- under rules of practice, 325.

EXAMINERS—

- duties of, 103, 104.
- divulging facts, 23, 104.

EXCESSIVE PENALTIES, 45.

- Act unconstitutional, 45.
- enormous fines, 45.

EXCEPTIONS—

- should be included in tariff they affect, 178.
- allowed, to change in rates, 213.

EXCEPTION SHEETS—

- filing of, 174.

EXCEPTIONS TO AWARD—

- under Arbitration Act, 143.

EXCHANGE OF PASSES—

- with whom, 28.
- officers and employees may, 111.
- at reduced rates, 110.
- invalidated, when, 252.

EXCURSIONS—

- school picnics, 262.

EXCURSION FARES—

EXCURSION TICKETS—

- round trip, included in concurrence, 204.

EXPEDITING ACT—

- applicable under Elkins Act, 119.
- generally, 123.

EXPEDITING SUIT—

- to whom applicable, 90.

References are to pages.

EXPENSES—

- of Commission and employees, how paid, 101.
- of investigation, 5, 101.

EXPLOSIVES—

- transportation of, 157.
- classification of, 228.

EXPORT RATES—

- re investigation, 315.

EXPORT AND DOMESTIC GRAIN RATES—

- re investigation, 316.

EXPORT AND IMPORT RATES—

- publication of, 30.
- must be published, 67.
- must be filed and published, 120.

EXPORT AND IMPORT TARIFF—

- carriers must publish, 237.
- of express companies, 308.

EXPOSITIONS AND FAIRS—

- free or reduced rates, 110.

EXPRESS BUSINESS—

- re investigation, 315.

EXPRESS CARS—

- employees have free pass, 27.

EXPRESS COMPANIES—

- are subject to the Act, 26.
- cannot carry freight free for officials or employees of railroads or express companies, 33.
- officials and employees may exchange free transportation, 33.
- transportation for is interstate commerce, 132.
- Tariff Circular No. 16-A.
- general provisions, 272.
- tariffs must be printed, 273.
- form and size, 273.
- substituting rate, 275.
- rates, 276.
- routes, 276.
- routing, 276.
- basing tariff, 276.
- term "points," 277.
- commodity rates, 277.
- mixed shipments, 278.
- cancellations, 278.
- amendments, 279.
- supplements, 279.

References are to pages.

EXPRESS COMPANIES—continued.

- index, 280.
- summer tariff, 281.
- concurrences, 281, 282, 286.
- joint agent, 282.
- duplicating rate, 282. -
- must be posted and filed, 282.
- state rates must be filed, 283.
- local tariff must be filed, 283.
- notice, 283.
- postage on tariff, 283.
- telegraph notice, 284.
- rejected schedules, 284.
- Commission's decision, 284.
- less than thirty days' notice, 284.
- orders of court, 285.
- numbering of tariff, 285.
- two copies to be filed, 285.
- send to auditor, 285.
- classification by joint agent, 285.
- participating carriers, 286.
- power of attorney, 286.
- form of appointment, 286.
- letter of transmittal, 294.
- administrative ruling and opinion, 296.
- when filed and published must become effective, 296.
- exceptions, 296, 298.
- joint rates greater or less than locals, 297.
- reduction of joint rate, 297.
- through rate higher than sum of locals, 297.
- new offices, 298.
- carload shipment, 298.
- emergency or necessity, 299.
- less than thirty days' notice, 299.
- agent's authority, 299.
- request, who from, 299.
- concurring express companies, 299.
- contracts for joint rates, 300.
- blockades, 300.
- as to free transportation of persons, 300.
- division of joint rates, 300.
- contracts, 300.
- transporting for government, 300.
- payment for transportation must be in money, 301.
- routing and misrouting, 301.
- overcharge, 301.
- maximum rate, 302.
- combination, 302.
- no preferential rates to carriers, 303.

References are to pages.

EXPRESS COMPANIES—continued.

- astray shipments, 303.
- return of damaged shipments, 303, 304.
- shipments refused, 304.
- distribution of circulars, 304.
- reparation on informal complaints, 305.
- shipper must pay lawful charges, 306.
- statute of limitations, 306.
- concurrence in joint tariff, 306.
- overcharge, 307.
- withdrawal of tariff, 308.

EXTENSIONS—

- on limited tickets, 236.
- on tickets, 255.
- under rules of practice, 323.

EXTERNAL POWERS OF COMMISSION—

- specific enumeration of, 5.

EXTRACTS—

- from record, evidence, 91.

FACILITIES FOR INTERCHANGE OF TRAFFIC—

- carriers must furnish, 54, 58.

FAIRS AND EXPOSITIONS—

- free or reduced rates, 110.

FALSE BILLING—

- prohibited, 12, 73.
- classification, 73, 74.
- weighing, 73, 74.
- representation of contents, etc., 73, 74.
- report of weight, 73, 74.
- by any person, penalties for, 73, 74.
- false classification, prohibited, 12, 73.

FALSE ENTRIES—

- falsify, mutilate or destroy records, 13, 104.
- punishment for, 104.

FALSE REPRESENTATION OF CONTENTS OF A PACKAGE, 12, 73, 74.

FALSE VALUATION—

- ruling on, 258.

FALSE WEIGHING—

- prohibited, 12, 73, 74.

FAMILIES—

- of employees, free pass, 27.
- definition of, who entitled to free pass, 28, 34.
- includes household servant, 268.
- as to free pass, 269.

References are to pages.

FARES (see PASSENGER FARE SCHEDULES)—

FAST FREIGHT LINE—

billing books are tariffs, 177.

how filed, 177.

FEDERAL GOVERNMENT—

reduced rates for, 253.

FEDERAL TROOPS—

transportation of, 228.

FEEDING AND GRAZING—

in transit, 250.

FEES—

of witness, 25, 78.

of magistrate, 78.

FERRIES AND BRIDGES—

inland and railroad, 26.

FILING AND PUBLICATION OF RATE SCHEDULES—

re investigation, 315.

FINDINGS OF FACT—

included in report of investigation when award is made, 14, 82.

as to just and reasonable rates, 37.

when prima facie evidence, 87, 91.

weight of, 92.

FLOODS—

blockade by, 265.

FOREIGN COMMERCE—

jurisdiction of Commission over, 30, 31.

FOREIGN COUNTRY—

schedules showing rates, 64.

FORFEITURES—

for failure to obey order, 16, 88.

venue of suits, 17, 88, 117.

where payable, 20, 88.

how recoverable, 20, 88, 117.

in case of rebates, 20, 117.

for failure to comply with order made under sec. 15, 88.

district attorneys to prosecute, 88.

for failure to file reports, 103.

for failure to keep accounts, 103.

under Elkins Act, 117.

Attorney-General to collect, 118.

witness not liable to, where compelled to testify, 121.

under Sherman Anti-Trust Act, 347.

References are to pages.

FORMS—

- of schedules, Commission may prescribe, 65.
- of accident report, 136.
- of submission under Arbitration Act, 141.
- of tariffs, 160.
- appointment of agent, 180.
- concurrence, 181, 182, 183, 184, 186.
- letters of transmittal, 188.
- passenger fare schedule, 190.
- local tariffs, 191.
- of appointment of agent under passenger tariff, 201.
- of concurrence under passenger fare, 204.
- of letter of transmittal under passenger tariff, 209.
- of complaint, 328.
- of answer, 329.
- notice, 330.
- subpoena, 330.
- depositions, 331.

FRANCHISES OF A CORPORATION—

- exercised in subordination to power to regulate commerce, 340.

FRAUD—

- what constitutes, 74.

FREE BAGGAGE—

- carried with joint interchangeable mileage tickets, 9, 111.
- with mileage tickets, 111.

FREE PASS—

- prohibited, 27.
- exceptions, 27, 32, 110.
- interchange of, 28, 111.
- land and immigration agent, 32, 219.
- telegraph companies, 32, 220.
- newspaper employees, 32, 220.
- cannot exchange, etc., 32.
- passenger assumes risk, 32.
- contract for not invalidated, 32.
- conference rulings on, 32.
- local attorneys not entitled to, 32, 33.
- local surgeons not entitled to, 32.
- nothing but money can be received for, 33, 221.
- representatives of correspondence schools cannot have, 33.
- inspector of employees' watches, 33.
- solicitors for insurance companies, 33.
- intrastate cannot be honored for interstate journey, 33.
- W. C. T. U. not entitled, 33.
- editors not entitled, 34.
- circus agents, 34.
- caretakers, 34, 35, 218, 247, 250, 254.

References are to pages.

FREE PASS—continued.

- customs inspectors, 34.
- attendant with shipment of horses, 34.
- special treasury agents not entitled to, 34.
- who entitled to, 34.
- when entitled to, 34.
- employees must be actual and bona fide, 35.
- when employees of bureau of insular affairs entitled, 55.
- use of by person not entitled, 36.
- to officers and employees, 27, 32, 111.
- exchanging passes, 28, 32, 111.
- includes vegetables, 218.
- to actual employees, 218.
- agents of correspondence school, 219.
- agents of insurance companies, not entitled, 219.
- agents of oil companies, 219.
- contractors may have, 219.
- ministers, 219.
- as to baggage express companies, 220.
- not to government officials, 219.
- tariffs for same, 220.
- to United States, State or municipality, 220.
- for employee's dead body, 250.
- state passes not good, 253.
- employees on leave, 257.
- servants cannot use, 260, 268.
- general ruling, 268.
- by servants when traveling with family, 268.
- form of, 269.

FREE TICKET (see FREE PASS)—

FREE TRANSPORTATION—

- not after Jan. 1, 1907, 10, 27.
- penalty for, 10, 28.
- enforcement of, 10, 28.
- prohibited, 27.
- express companies cannot carry free for other carriers, 33.
- for United States, 110.
- for State, 110.
- for municipality, 110.
- for charitable purposes, 110.
- fairs and expositions, 110.
- by carriers for each other, 248.
- of company material, 251.

FREIGHT—

- by express companies, 300.
- sale of to pay charges, 254.

FREIGHT DEPOTS—

- included in "Railroad," 24, 27.

References are to pages.

FREIGHT RATES FROM MEMPHIS TO POINTS IN ARKANSAS—
re investigation, 316.

FREIGHT TARIFFS—
regulations governing, 159, 160.

FREIGHT TRAINS—
passengers on, 255.

GAS—
natural, excepted, 26.
artificial, excepted, 26.

GRAB IRONS AND HANDHOLDS—
under Safety Appliance Act, 126.

GRAIN—
differentials, 56.
reshipping rate, 258.
re investigation, 315.

GRAIN DOORS—
cannot reimburse shipper for, unless published, 263.

GRAIN PRODUCTS—
term cannot be used, 165.

GRANGER CASES—
principles decided, 339.

GRAZING AND FEEDING—
in transit, 250.

GRAZING IN TRANSIT—
charges cannot be avoided after expiration of limit, 257.

GROUND—
included in "Railroad," 24, 27.

GROUP OR BLANKET RATES—
sustained, 56.

HANDHOLDS—
Safety Appliance Law, 261.

HANDLING OF PROPERTY TRANSPORTED—
included in "transportation," 24.
wholly within a State, 26.

HAUL, LONG AND SHORT—
Sec. 4, statute, 80.

HEARING—
who may apply for, 14, 80, 83, 84.
upon motion of Commission, 14, 80.
notice of, 14, 80.

References are to pages.

HEARING—continued.

- evidence before, 14, 77.
- upon division of rate, 15, 84.
- under sec. 15 to reduce a rate, 15, 83.
- as to regulation or practice, 15, 83.
- upon application for injunction, 16, 89, 90.
- upon petition to enforce orders other than for payment of money, 19, 89.
- five days' notice to Commission, 19, 90.
- under Elkins Act, 22, 118.
- on unjust rate, 83.
- as to allowances, 84.
- upon complaint and award of damages, 87.
- by court upon enforcement of order other than to pay money, 89.
- priority in certain cases, 89.
- certain cases must have five days' notice, 90.
- in cases under Expediting Act, 123.
- under Safety Appliance Acts to extend time, 127.
- to increase percentage of cars using brakes, etc., 128.
- under Arbitration Act, 142.
- under rules of practice, 323.

HOURS OF SERVICE ACT—

- general statutes, 137.
- Commission's ruling, 138.
- as to street car companies, 258.
- employees deadheading, 263.
- ruling on, 266.
- re investigation, 316.

ICING CHARGES—

- schedules shall show, 64.
- see REFRIGERATION.

IDENTITY OF TONNAGE—

- ruling on, 243, 265.

IMMIGRANTS—

- re investigation, 315.

IMMIGRATION INSPECTORS—

- may have free pass, 27.

IMMUNITY STATUTES, 121.

- in suits against carriers, 23, 121, 349.
- generally, 121.
- who immune, 122.
- general provisions, 349.

IMMUNITY OF WITNESS, 72, 77.

- is personal, none to corporation, 79.
- generally, 79.
- under Elkins Law, 119.

References are to pages.

IMPORTS—

Commissions on, 248.

IMPORT AND DOMESTIC TRAFFIC—

re investigation, 316.

IMPORT AND EXPORT RATES—

publication of, 30, 67, 120, 237.

IMPORT RATES—

re investigation, 315.

INDEX OF TARIFF—

what it shall contain, 162, 171.

to supplements, 168.

revision and supplements, 172.

must publish, 196.

INDIAN TERRITORY—

right of way through, 129.

safety signals, 129.

INDICTMENT—

for pooling freight, 75.

conspiracy against United States, 75.

failure to furnish cars, 75.

particulars it must show, 75.

for rebating, 120.

INDUCING CARRIER TO DISCRIMINATE, 13, 17, 73, 74.

INFORMAL COMPLAINTS—

special reparation on, 231.

INJUNCTION—

to enforce orders, 16, 89, 90, 118.

if rates confiscatory, 45.

against state officers, 45.

against criminal proceedings, 46.

against court proceedings, 47.

enforcement of order other than to pay money, 89.

expediting statute applicable to, 90.

generally, 91.

INMATES—

of national or state homes, hospitals, etc., free pass, 110.

INQUIRIES—

may be prosecuted, 6, 101.

IN RE INVESTIGATIONS—

list of, 315.

INSPECTORS—

duties of, under Safety Appliance Acts, 134.

References are to pages.

INSPECTORS OF EMPLOYEES' WATCHES—
cannot have free pass, 33.

INSURANCE COMPANIES—
solicitors for, cannot have free pass, 33.

INTENT—
as to criminal, 120.

INTERCHANGE OF PASSES—
to whom, 28, 32, 111.

INTERCHANGE OF TRAFFIC—
equal facilities for, 7, 54, 58.
how construed, 23, 54, 58.

INTERLOCKING SIGNALS—
under Safety Appliance Act, 129.

INTERMEDIATE POINTS—
rates from, 56.

INTERLOCUTORY ORDER—
restraining order of Commission, 16, 89.
upon hearing after five days' notice, 16, 90.

INTERPRETATION CLAUSES—
"common carrier," 23, 26.
"railroad," 23, 26.
"transportation," 24, 27.
"carrier," 24, 66.
"person" or "persons," 347.

INTERSTATE COMMERCE—
between points in same State but carried through another State, 29.
where lines are wholly within a State, 29.
test of applicability of Safety Appliance Acts, 131.
where it begins, 135.
see power of Congress to regulate, 330.
power of Congress to regulate rates, 340.

INTERSTATE COMMERCE COMMISSION—
appointment, 76.
terms, 76.
qualifications, 76.
vacancies, 76.
powers and duties of, 76.
may compel attendance of witness and production of books, papers, etc., 77.
may invoke aid of courts, 77.
is not a court, 79.
has no judicial powers, 79.
procedure before, 80.
may fix rates, 83.
regulation and practices, 83.

References are to pages.

INTERSTATE COMMERCE COMMISSION—contd

- may conduct its proceedings, 100.
- may make and amend orders, 100.
- party heard in person or by attorney, 100.
- employ and fix compensation, 101.
- may hire offices, 101.
- expenses of, how paid, 101.
- sessions, where held, 101.
- enlarged to seven members, 114.
- salary, 114.
- terms and vacancies, 114.
- may proceed under Elkins Act, 118.
- departure from published rates, 118.
- powers and duties under Safety Appliance Act
- Street Railway Acts, 151.

INTRASTATE COMMERCE—

- Congress may control, when, 132.
- under Safety Appliance Act, 134.

INTRASTATE RATES—

- interstate need not be reduced to meet, 41.
- entitled to respectful consideration, 41.

INVESTIGATION—

- may be made by Commission upon its own motion, 14, 80.
- upon petition filed, 14, 80.
- when made, 76, 79, 80.
- report of, 82.

INVESTIGATIONS, IN RE—

- list of, 315.

JOINT DEFENDANTS—

- suits against, 17, 87.

JOINT FARES—

- defined, 190.
- greater than sum of locals, 214.
- reduction of, to equal, 214.

JOINT INTERCHANGEABLE MILEAGE TICKETS—

- carriers must file tariffs, 9, 111.
- cannot charge more, 13, 111.
- may issue, 111.
- must file tariffs, 111.
- no discrimination, 111.

JOINT PLAINTIFFS—

- suits by, 17, 87.

JOINT RATES—

- may be apportioned, 6, 83.

References are to pages.

JOINT RATES—continued.

- division of, Commission may make order, 15, 83.
- schedules must be posted, 64.
- what carrier authorized to publish, 67.
- made by concurrence, 67.
- Commission may establish, 84.
- where tariff shows no routing directions, 164.
- between water and rail carriers, 261.
- division of, by express companies, 300.

JOINT RATING—

- re investigation, 316.

JOINT SUIT—

- judgment, how rendered, 88.

JOINT AND SEVERAL LIABILITY—

- for unjust discrimination, 17, 74.
- carriers are, for reparation, 93.

JOINT TARIFFS—

- must specify carriers, 7, 65.
- evidence of concurrence, 65.
- issued by joint agents, 179.
- defined, 190.

JOINT THROUGH RATES—

- reasonableness of, 38.
- generally, 67.
- reduction sought by attacking local, 91.
- in case of, carrier must send car through or transfer, 258.

JUDGMENT—

- evidence of payment by carrier, 24.

JURISDICTION—

- of claims for damages, 70.

JUST AND REASONABLE RATES—

- may be established by the Commission upon complaint, 7, 27, 83.
- carrier shall provide, 27, 83.
- carrier must make, 27, 83.
- opinion of expert witness, 36.
- effect on growth and prosperity, 36.
- cost of transportation, 36.
- rates in force at other cities, 36.
- conditions and circumstances surrounding the traffic, 36.
- volume of traffic, 36.
- expenses of construction, 36.
- competition, 36.
- space occupied, 36.
- to inquire whether reasonable, is a judicial act, 36.
- to prescribe what shall be charged, a legislative act, 36.

References are to pages.

JUST AND REASONABLE RATES—continued.

- the interest of the carrier, shipper and public must be considered, 36.
- value of freight, 36.
- risk to carrier, 36.
- entire field of service, 36.
- sworn returns for purposes of taxation, 36.
- value of carriers' property, 36.
- rates fixed by State, 36.
- findings of fact as to, 37.
- minimum carloads, 37.
- established to reach particular markets, 37.
- nature of commodity, 39.
- carriers must establish in the first instance, 37.
- risk of loss or damage, 39.
- financial condition of carrier, 39.
- rates long in force, 39.
- value of the property devoted to the public service, 37.
- how to determine, 37.
- graduated according to length of haul, 37.
- voluntarily reduced, 37.
- must justify advance, 38.
- because business of shipper is prosperous, 38.
- test of reasonableness, 38.
- according to use to which commodity is put, 38.
- rapidity of movement, 38.
- special equipment, 38.
- loading and unloading cars, 38.
- increased cost of operation, 38.
- increase of business of carrier, 38.
- inexpensiveness of the service, 38.
- carrier earning a liberal income, 39.
- paying liberal dividends, 39.
- expending large sums in improvements, 39.
- as to the previous existence, 39.
- circumstances of carrier, 39.
- operating expenses, 39.
- cost of transportation, 39.
- grades, 39.
- population, 39.
- volume of traffic, 39.
- book charges, 39.
- dividends, 39.
- failure of carrier to secure a profit, 39.
- a question of fact, 39.
- a judicial question, 40.
- may be unreasonably low, 40.
- average cost of carriage, 40.
- burden upon complainant, 40.
- relation to cost of traffic, 40.

References are to pages.

JUST AND REASONABLE RATES—continued.

- character of the traffic, 40.
- dissimilar conditions, 40.
- lines of rival companies, 40.
- different branches of same company, 40.
- comparison of rates, 40.
- rate per ton per mile, 40.
- needs of the shipper, 40.
- distance, 40.
- hazard, 41.
- special services rendered the shipper, 41.
- capitalization, 41.
- expenditures for construction and equipment, 41.
- need not be reduced to meet intrastate, 41.
- return upon investment, 44.
- burdensome conditions invalid, 44.

KNOWLEDGE OF OFFENSE—

- under Safety Appliance Act, 134.

LADING OF CARS—

- wholly immaterial under Safety Appliance Act, 133.

LAKE AND RAIL RATES—

- withdrawal of, 30.

LAND AND IMMIGRATION AGENTS—

- re investigation, 316.

LANE, COMMISSIONER—

- memoranda on legal rates, 310.

LEASE—

- to operate a railroad, 27.

LEASED CARS—

- exclusive use of, 56.

LEASING—

- carriers' property to shipper, 268.

LEGAL RATES—

- but one between two points, 68.
- memorandum by Commissioner Lane, 310.

LETTER OF TRANSMITTAL—

- must accompany tariffs, 188.
- under passenger tariffs, 209.

LIABILITY—

- of carriers for damages, 70, 105, 106.
- shall issue receipt or bill of lading, 24, 105.
- liable to lawful holder, 24, 105.
- of carriers under Arbitration Act, 140.

References are to pages.

LIFE-SAVING MEDALS—

general provisions, 149.

LIKE KIND OF PROPERTY—

long and short haul clause, 60.

LIKE KIND OF TRAFFIC—

definition of, 50.

LIMITATION—

on complaint for recovery of damages, 24, 87, 97, 98, 99.

petition for enforcement of order, 24, 87.

on accrued claims, 24, 87, 97.

see sec. 16, 70.

complaints must be filed within two years, 87.

of actions for damages, 97.

statute, ruling on, 233, 248.

statute of, as to express companies, 306.

under Employers' Liability Act, 343, 345.

LIMITED TICKETS—

extensions on, 236.

LINE—

combination of carriers for through transportation, 60.

LINEMEN—

of telegraph and telephone companies have free pass, 27.

LOADING OF NEW CARS, 240.

LOCAL RATES—

attacked with ulterior object, 91.

LOCAL TARIFFS—

regulations governing, 191.

arrangement of points, 194.

LONG AND SHORT HAUL, 5, 60.

may be modified by Commission, 5, 60.

how modified, 60.

competition makes dissimilar conditions, 61.

see Special Circular No. 6, 238.

maxima rules, 238.

under rules of practice, 327.

LOSS OR DAMAGE—

carrier liable for, 9, 24, 105, 106.

prompt settlement, 109.

MAGISTRATES—

fees of, 78.

MAILING LIST, 231.

MAIL RECEIPT—

prima facie evidence, 88.

References are to pages.

MANDAMUS—

- Commission may have writ, 6, 104.
- in suits to enforce orders other than for payment of money, 19, 89.
- when issued, 20, 89, 104, 113.
- to compel compliance, 104.
- to compel reports, 105.
- to move traffic, 113.
- to furnish cars, 113.

MARINE INSURANCE—

- shippers to arrange, 42.

MATERIAL—

- company, free carriage, 251.

MAXIMUM RATES—

- to be charged, 15, 83.
- not specific, ruling on, 225.
- combinations, 225.

MEALS—

- in connection with tickets, 252.

MEASURE OF DAMAGES, 70.

MEDAL ACT—

- general provisions, 149.

MERGING OF CARRIERS, 196.

MILEAGE—

- of witnesses, 25, 101, 325.

MILEAGE TICKETS—

- reduced rates, 110.

MILEAGE BOOKS—

- ruling on, 264.

MILITARY TRAFFIC—

- must be expedited, 8, 66.

MILLING-IN-TRANSIT—

- ruling, 242, 265.

MINIMUM CARLOADS—

- reasonableness of, 37.
- ruling on, 228.

MINIMUM CHARGE—

- should be for 100 lbs., 49.

MINISTERS OF RELIGION—

- may have free pass, 27.
- when not entitled to free pass, 35.
- at reduced rates, 110, 219.

References are to pages.

MINNESOTA RATE CASE—

analysis of, 44.

MISCELLANEOUS PROVISIONS—

examiner divulging facts, 23, 104.

immunity provisions, 23, 72, 79, 119, 122, 349.

interchange of traffic, 23, 54.

interpretation clause, 23, 26, 66.

liability of carrier, 24, 70, 105, 106.

limitation of proceedings, 24, 87, 97, 99.

notice, 24, 80, 82.

State Railroad Commission, 25, 80.

reparation, 24 (see REPARATION).

witness fees, 24 (see WITNESSES).

MISDEMEANOR—

to violate free pass law, 28.

to violate act, 73.

false billing, etc., 73.

fraud in false billing, etc., 74.

to induce carriers to discriminate, 74.

under Elkins Law, 116.

failure to make accident reports, 136.

under Sherman Anti-Trust Act, 346.

MISROUTING—

drayage charges, refund for, 251.

via line having no tariff, 267.

involving carriers not subject, 268.

MIXED CARLOADS—

rates on, 166.

MODIFICATIONS OF LAW—

long and short haul, 60.

posting schedules, 65.

MODIFICATION OF ORDERS—

may be suspended, modified or set aside by the Commission or the courts, 15, 83, 88, 100.

as to fixing rates, etc., 83, 88.

Commission may, upon rehearing, 100.

MONOPOLIES—

Anti-Trust Act, 346.

MUNICIPALITIES—

may have free or reduced rates, 110, 253, 261.

by express companies, 300.

MUTILATION OF RECORDS, 13, 104.

NATURAL ADVANTAGES, 56.

References are to pages.

NATURAL GAS, EXCEPTED, 26.

NATIONAL TRADE UNIONS—
liability of, 145.

NEGLIGENCE—
under Employers' Liability Act, 342, 345.

NEW CARS—
loading of, 240.

NEW ROADS—
publishing and filing tariffs, 215.
rates, ruling, 247.

NEWS COMPANIES—
as to free pass for employees, 268.

NEWSPAPER EMPLOYEES—
as to free pass for, 221.
re investigation, 316.

NEWSBOYS ON TRAINS—
may have free pass, 27.

NINE-HOUR LAW (see HOURS OF SERVICE ACT, 137).

NOTICE—
of change in rates, 11, 65, 175, 176.
of proceeding before Commission, 14, 80.
of suspension or modification of orders of Commission, 15, 88.
Commission must have five days before granting injunction, 16, 25, 90.
under Elkins Act, 22, 119.
upon complaints against carriers, 24, 80, 83.
served by mail, 25, 88.
reports of investigation, 25, 82.
to take depositions, 78.
in case of modification of order, 88.
form of, Commission may prescribe, 100.
to railway to erect automatic signals, etc., 129.
of termination of service under Arbitration Act, 142, 145.
of cancellation of rate, 167.
of authorization of agent to file tariffs, 174.
acceptance by carrier, 174.
of revocation of authority, 174.
less than statutory, 176.
of filing of tariff containing order of Commission, 200.
of revocation of concurrence, 209.

NURSES—
when may have free pass, 27.

OCEAN CARRIERS—
jurisdiction of the Commission, 30.
not subject to the act, 237.
as to express companies, 308.

References are to pages.

OFFSETS—

claim against carrier, 256.

OIL—

by pipe lines, 26.

OKLAHOMA TERRITORY—

right of way through, 129.

Safety Appliance Act, 129.

interlocking signals, 129.

automatic signals, 129.

ORDERS (see MODIFICATION OF ORDERS)—

of compliance, 5, 88, 327.

to cease and desist, 6, 15, 83,

when they take effect, 15, 83, 88.

period of time in force, 15, 83, 88.

served by mailing a copy, 15, 88.

other than to pay money, enforcement of, 16, 89.

disobedience of, 16, 89.

effective in not less than thirty days, 83.

in force for two years, 83.

must be complied with while in effect, 88.

proceedings to enforce, 91.

weight of, 92.

of court, circulars announcing compliance, 177, 200.

ORDERS FOR PAYMENT OF MONEY—

Commission may make, 14, 15, 87.

award upon hearing, 87.

if carrier refuses to comply, 87.

ORDER OTHER THAN TO PAY MONEY—

if carrier fails to obey, 89.

OVER THE SAME LINE—

long and short haul, 60.

OVERCHARGE—

refund of, ruling of, 223, 224, 232.

unlawful inclusion of carrier's name, 236.

as to express companies, 301, 307.

PACKAGES—

may be assembled to make carload, 49.

PARCEL EXPRESS, 50.

PARLOR CAR RATES, 50.

PARTICIPATING CARRIERS—

lists of, 179.

PARTIES—

to include all persons interested, 118.

References are to pages.

PARTIES—continued.
rules of practice, 321.

PARTY RATE TICKETS—
re investigation, 36.
must be open to public, 41.
carriers cannot transport property on same principles, 49.
ruling on, 222.

PASS (see **FREE PASS**).

PASSES TO BONDSMEN—
re investigation, 316.

PASSENGERS—
on freight trains, 255.

PASSENGER FARE SCHEDULES—
regulations governing, 159, 190.

PASSENGER TARIFFS—
re investigation, 315.

PENALTIES FOR OFFENSES, 7, 8, 9, 10, 11, 12, 13, 73.

PENALTIES EXCESSIVE—
act unconstitutional, 45.

PENDING LITIGATION—
not affected, 111.
Elkins Act, 120.

PERJURY—
witness not exempt from, 120, 349.

"PERSON" OR "PERSONS"—
what word includes, 347.

PETITION—
filed before Commission, 14, 80.
copy forwarded to carrier, 14, 80.
in Circuit Court for enforcement of order to pay money, 16, 18, 87.
to Circuit Court for enforcement of order other than to pay money, 16, 19, 89.
under Elkins Act, 22, 118.
under Sherman Anti-Trust Act, 347.

PETITION FOR ENFORCEMENT OF ORDER—
limitation on, 24, 87.

PHYSICIANS—
when may have free pass, 27.

PICNICS—
rates for, 262.

PIPE LINES—
oil or other commodity except water and gas, 26.
schedules must be posted, 64.

References are to pages.

POLICE POWER—

when burden upon Interstate Commerce, 340.

POOLING FREIGHTS—

prohibited, 11, 63.

sec. 5, statute, 63.

construction of section, 63.

agreement not within, 63.

indictment for, 75.

PORT OF TRANSSHIPMENT, 26.

POSTAGE—

tariffs must be free from, 176.

POST OFFICE INSPECTORS—

may have free pass, 27, 34.

POWERS—

enumerated, not exclusive, 84.

POWER OF ATTORNEY—

to file consolidated concurrences, 174.

form of, 178.

POWER OF CONGRESS—

over Interstate Commerce, 332.

to regulate rates of railroads, 340.

POWERS DELEGATED TO THE COMMISSION, 5.

internal powers, 5.

external powers, 5.

PRACTICE, RULES OF—

before Commission, 321.

PRECEDENCE OF CASES—

enforcement of orders, 22, 89.

Expedition Act, 22, 123.

ATTORNEY-GENERAL—

must file certificate, 22, 123.

in case of appeal, 22, 90.

PREFERENCE—

in car service, 56.

PREFERENTIAL RATES—

carrier cannot be given, 227.

PREJUDICE OR DISADVANTAGE—

declared unlawful, 54.

PRESIDENT OF THE UNITED STATES—

demand preference for military traffic in time of war, 66.

References are to pages.

PRESUMPTIONS—

- right doing attaches to acts of carrier in establishment of rates, 37.
- from change of rate, 38.
- that a rate is reasonably low because published, 39.
- none from change of rate, 53.
- honest intent and right conduct, 53
- of good faith and integrity, 53.

PRIMA FACIE EVIDENCE—

- copies of schedules, 14, 90.
- copies of tariffs, 14, 90.
- copies of contracts, 14, 90.
- copies of reports, 14, 90.
- registry mail receipt, 15, 88.
- findings and order of the Commission, 16, 82, 87, 92.
- findings of fact, 82, 87, 92.
- copies of schedules, etc., 90.

PRINTING AND POSTING SCHEDULES—

- sec. 6, statute, 64.

PRINTING OF PLEADINGS—

- under rules of practice, 327.

PRIVATE CARS—

- preference or advantage in, 55.
- defined, 242, 264.

PRIVATE SIDE TRACK—

- defined, 242, 264.

PRIVILEGES OR FACILITIES—

- must be published, 11, 50, 64, 66, 68, 169.

PROCEDURE BEFORE THE COMMISSION, 5 (see RULES OF PRACTICE)—

- conduct its business, 5, 100.
- make rules or orders, 5, 100.
- to hear any party in person or by attorney, 5, 100.
- to record official acts, 5, 100.
- public proceedings upon request, 5, 100.
- to hold general sessions in Washington, 5, 101.
- to hold special sessions anywhere in United States, 5, 101.
- to make annual report, 5 (see REPORTS).
- petition, 14, 80.
- notice, 14, 80.
- evidence, 14, 77, 90.
- decision, order or requirement, 14, 82, 83, 87.
- modification of orders, 15 (see this title).
- supplemental orders, 15, 83.
- enforcement of orders, 15 (see ORDERS).
- rehearing, 15, 100.
- special counsel, 16, 89.
- generally, 80, 81, 91.

References are to pages.

PROCESS—

where served, 88.

PROHIBITIONS AGAINST CARRIERS—

specific enumeration of, 10.

PROHIBITIVE RATES—

cannot be put in, 68.

PROPORTIONAL RATES—

must be specific, 165.

PROTEST—

not necessary, 94.

PUBLIC, THE—

may prescribe rules for securing service and equality, 53.

not a general manager, 53.

PUBLIC SESSIONS—

of Commission, 321.

PUBLISHED RATES—

cannot be deviated from, 66, 117, 119.

PULLMAN CARS—

use of at stop-over points, 256.

QUORUM—

majority shall constitute, 100.

RAIL AND WATER RATES—

suspension and restoration of, 172, 196.

joint rates, 261.

RAILROADS—

what term includes, 23, 26.

cannot transport certain commodities, 28, 42.

construction of under Arbitration Act, 140.

construction of in Hours of Service Act, 137.

RAILROAD COMMISSIONER OF STATE—

may apply to Commission, 25, 80.

RAILROAD STATIONS AND TERMINALS—

stopping through trains, 42.

RAILROAD TELEGRAPH CONTRACTS—

re investigations, 316.

RAILWAY MAIL SERVICE—

employees may have free pass, 27, 34.

RATES (see JUST AND REASONABLE RATES)—

Commission may prescribe, 6, 83.

changes in, 11 (see this title).

References are to pages.

RATES (see **JUST AND REASONABLE RATES**)—continued.

proceeding to reduce under sec. 15, 15, 83.
for through routes, 27 (see this title).
import and export, publication of, 30 (see this title).
on raw material higher than on manufactured product, 53.
from intermediate points, 56.
but one legal, 68.
when published, is fixed and unalterable, 68.
prohibitive, 68.
fixing lower, in bill of lading, 74.
may be fixed by carrier in the first instance, 79.
division of, 83.
voluntarily reduced, 96.
when published, the legal rate, 117.
on through shipment when no joint apply, 164.
notice when changed, 175.
exceptions allowed, 213.
on short notice, 217.
reduced before hearing, 249.
on return movements, 255.
when old rate not canceled, 256.
east bound and west bound, 257.
reshipping on grain, 258.
legal, memo. by Commissioner Lane, 310.
reasonableness a judicial question, 338.
to prescribe is a legislative act, 338.
power of Congress to regulate, 340.
confiscatory, 339, 341.

RATES ON FOOD PRODUCTS—

re investigation, 315.

RATES, PRACTICES, ACCOUNTS AND REVENUE OF CARRIERS—

re investigation, 316.

RATE WARS—

re investigation, 315.

REASONABLE CARE—

no defense under Safety Appliance Act, 133.

REBATES—

prohibited, 10, 13, 48.
evidence of not competent to prove unreasonableness of rate, 37.
under Elkins Act, 116, 118, 120.

RECEIVERS—

may be punished for violation of Act, 73.
under Arbitration Act, 145.

RECEIVING PROPERTY—

within a State, 26.

References are to pages.

RECEIPT—

- carrier must issue, 9, 24, 105.
- liable for loss or damage, 9, 106.

RECONSIGNMENT—

- charges must be shown in tariff, 169, 227.
- provided in tariff, 227.
- no retroactive effect, 248.
- privileges and rules, 262.

RECORDS—

- other than those prescribed by Commission, 13, 103.

REDEMPTION OF TICKETS—

- ruling on, 246, 263.

REFRIGERATION OR ICING—

- included in "transportation," 24, 27.
- carrier must provide, 32.
- re investigation, 316.

REFUND—

- prohibited, 11 (see *ELKINS ACT*, 116)—
- drayage charges, 251.
- carrier prohibited from, 66.

REFUNDS AND COMMISSIONS—

- ruling on, 234.

REFUND OF OVERCHARGE—

- ruling on, 223, 224.

REGISTRY MAIL RECEIPT—

- prima facie evidence, 15, 88.

REGULATIONS—

- governing construction, and filing of freight tariff and classifications, 159.

REGULATION AND PRACTICES—

- Commission may prescribe, 6, 83.
- proceeding under sec. 15, as to what is just, fair and reasonable, 15, 83.

REHEARINGS, 6, 100.

- Commission may reverse, change or modify original decision, 15, 100.
- application for, 16, 100.
- Commission may grant, 100.
- under rules of practice, 326.

RE INVESTIGATIONS—

- list of, 315.

REISSUED ITEMS—

- without change, etc., 168.

REISSUING TARIFF—

- at specified times, 195.

References are to pages.

RELEASED RATES—

discussion of liability of carrier, 106.
re investigation, 316.

REMAND—

where error of law, 91.

REMEDIES—

now existing, not altered, 111.

REMEDIAL STATUTES—

Safety Appliance Act, 134.

REMOVAL OF COMMISSIONER—

for inefficiency, 4, 76.
neglect of duty, 4, 76.
malfeasance in office, 4, 76.

REPAIRS—

under Safety Appliance Act, 132, 134.
to cars by shipper, 250.

REPARATION—

can be made upon receipt of complaint, 14, 80.
in case of unjust discrimination, 25, 80, 87.
for violation of Act, 25, 80, 87.
must be brought primarily through the Commission, 37, 93.
for unreasonable rates, 71.
carrier may make, 80.
complainant must prove damages, 92.
arises from failure of carrier to perform duties, 92.
carrier jointly and severally liable, 92.
ex contractu claims not cognizable, 93.
measure of damages, 93.
must be promptly asserted, 93.
consumer cannot recover, 93.
grows out of unreasonable rate, 93.
to whom paid, 95.
speculative damage will not be allowed, 96.
as to jurisdiction, 97.
limitation of actions, 97.
special, on informal complaints, 231.
includes demurrage charges, 231.
only one basis of rate in tariff, 233.
on informal complaints, ruling, 254, 255.
benefits of, to all like shipments, 256.
on informal complaints as to express companies, 305.

REPEALS—

by implication, not favored, 70.
of conflicting laws, 114.
effect of clause in Hepburn Act, 120.

References are to pages.

REPEALS—continued.

- in Elkins Act, all conflicting laws, 120.
- under Arbitration Act, 146.

REPORTS—

- annual, 5, 6, 8, 102.
- and conclusions of Commission, 6, 82.
- publication of, 6, 82.
- distribution of, 6, 82.
- monthly, of carriers, 6, 102.
- special, of carriers, 6, 102.
- form of, 6, 102.
- time to file, 6, 102.
- of investigation, 14, 15, 25, 82.
- decision, order or requirement, 14, 82.
- findings of fact, 14, 82.
- copies, evidence, 14, 82, 90.
- annual for distribution, 82.
- and decisions, publication of, 82.
- entries of record, 82.
- copies sent to parties, 82.
- weight of findings and order, 92.
- what reports shall show, 102.
- monthly carriers may be required to file, 103.
- special, carriers may be required to file, 103.
- if wholly within a State, carrier does not have to make, 105.
- mandamus may issue to compel filing, 105.
- of Commission to Congress, 110.
- distribution of, 110.
- monthly, in duplicate, 252.

REPORTS OF ACCIDENTS—

- carriers must make, 136.

REQUEST FOR TRANSPORTATION—

- carrier shall provide, 27.

RES ADJUDICATA—

- Commission's duty as to, 81.

RESTRAINTS AND MONOPOLIES—

- Anti-Trust Act, 346.

RESTRAINING ORDER—

- what it should command or forbid, 91.

RETROACTIVE EFFECT—

- tariffs cannot have, 68.

RETROACTIVE LAWS—

- effect of, 97, 98.

RETURN MOVEMENTS—

- rates on, 255.

References are to pages.

REVOCATION OF CONCURRENCE—

effective, when, 209.

RISK—

not assumed by employer under Safety Appliance Act, 127.

ROUND-TRIP TICKETS—

non-transferable, 59.

for voters, 212.

on certificate plan, 212.

validation of, 246.

limitations on, 255.

ROUTING—

duty of carrier, 42.

if tariff contains no directions, 164.

under passenger schedules, 193.

not reasonable route, 267.

ROUTING AND MISROUTING—

ruling on, 222, 224.

as to express companies, 301.

ROUND-TRIP EXCURSION FARES—

ruling and opinion on, 211.

limited to a designated period, 211.

no supplement, 212.

included in concurrence, 204.

RULES OF PRACTICE—

before Commission, 321.

complaints, 322.

answers, 322.

notice, 322.

demurrer, 322.

service of papers, 323.

amendments, 323.

adjournments, 323.

extensions, 323.

stipulations, 323.

hearings, 323.

depositions, 324.

witnesses, 325.

subpœna, 325.

evidence, 325.

briefs, 326.

rehearing, 326.

printing, 327.

copies, 327.

compliance, 327.

long and short haul, 327.

information, 328.

address, 328.

forms, 328.

References are to pages.

RULINGS—

- distribution of, 231.
- in conference, 247.

SAFETY APPLIANCE ACTS—

- general statutes, 125.
- penalties for violation, 126.
- time may be extended, 127
- amendments to, 127.
- territory applicable, 127.
- purpose of, 130.
- Act is constitutional, 131.
- allegations unnecessary, 131.
- joint and severally liable, 131.
- test of application, 131.
- switching movements, 131.
- interstate commerce, 131.
- construction of act, 132.
- power of Congress over, 132.
- participating carriers, 132.
- repairs, 132.
- switching company, subject to, 133.

SAFETY APPLIANCE LAW—

- handholds, 261.

SAFETY APPLIANCES—

- re investigation, 316.

SALARY OF COMMISSIONERS, 4, 114.

SALES—

- of freight to pay charges, 254.

SCHEDULES, CHANGES IN, 5, 65.

- filing of, 5, 7, 64.
- modify requirements, 5, 65.
- form of, 5, 64, 65.
- must be printed, 7, 64.
- must be open to inspection, 7, 64.
- must be filed and published before carrier can transport, 11, 66.
- prima facie evidence, 14, 90.
- Commission cannot establish, 37.
- printing and posting, 64.
- where freight carried through foreign country, 64.
- must file, 68.
- notice of change, 65.
- effective though not posted in depots, 67.
- may be enjoined from filing, 71.
- passenger fare, 159, 190.
- may refer to others, 164.
- when rejected, 176, 200,

References are to pages.

SEAL—

Commission shall have, 100.

SECRETARY—

shall preserve records, 90.

Commission shall appoint, 101.

SEPARATE CARS FOR WHITE AND COLORED PERSONS—

is not discrimination, 50.

SERVICE OF PROCESS OR NOTICE—

orders to pay money, 15, 18, 88.

orders other than to pay money, 18, 89.

injunctions, 18 (see this title).

suits by Commission, 18, 89, 118.

under rules of practice, 323.

SERVANTS—

cannot use free pass, 260.

when traveling with family, 268.

SHEEP—

grazing in transit, 257.

SHERMAN ANTI-TRUST ACT—

general provisions, 346.

amended, 347, 349.

appropriation, 349.

decisions under, 350.

SHIPMENTS—

refused by consignee or damaged in transit, 229.

SHIPPERS—

should give assistance in writing, 226.

should co-operate, 302.

SHORTAGE IN CARS—

analyzed and decided, 56.

SHORT HAUL—

excessive charge prohibited, 11, 60.

SIDE TRACKS, 41.

delivery on private, cannot be enforced by State, 41.

private, defined, 242.

SIGNALS AT CROSSINGS—

under Safety Appliance Act, 129.

SISTERS OF CHARITY—

not entitled to free pass, 35.

SLEEPING CARS—

employees on, have free pass, 27.

References are to pages.

SLEEPING CAR COMPANIES—

are subject to the Act, 26.

SOLDIERS' AND SAILORS' HOMES—

inmates may have free pass, 27.

reduced rates to, 111.

SPECIAL AGENTS OR EXAMINERS—

may inspect and examine accounts, 103.

cannot divulge facts, 23, 104.

duties of, 104.

SPECIAL CIRCULAR NO. 6—

provision of, 238.

SPECIAL COUNSEL—

may be employed by Commission, 6, 16, 89.

under Sherman Anti-Trust Act, 349.

SPECIAL FARES—

cannot be required by Commission, 81.

SPECIAL ORDERS (see MODIFICATION OF ORDERS)—

to stay enforcement, 6, 100.

to reverse or change orders, 6, 100.

SPECIAL RATES—

prohibited, 10, 48.

SPECIAL TREASURY AGENTS—

not entitled to free pass, 34.

SPURS—

included in "railroad," 23, 27.

STAGE LINES—

as to free pass for, 269.

STANDARD HEIGHT—

of drawbars, 126.

STATE—

suit against, 45.

officers may be enjoined by Federal court, 45.

may have free or reduced rates, 110, 261.

STATE COMMISSIONS—

may apply to Commission, 25.

power to stop trains, 340.

STATE GOVERNMENTS—

reduced rates for, 253.

free transportation by express companies, 300.

STATE PASSES—

not good on interstate journey, 253.

References are to pages

STATIONS—

- stopping through trains, 42, 43, 340.
- adequacy of local facilities, 43.
- schedules must be posted in, 64, 266.
- right of State Commission to stop interstate trains, 340.

STATISTICS—

- copies of, evidence, 90.

STATUTE OF LIMITATIONS—

- ruling, 248.
- as to express companies, 306.

STEAMSHIP COMPANIES—

- as to free pass for, 269.

STIPULATIONS—

- under rules of practice, 323.

STOCK YARDS—

- delivery of cattle, 55.

STOP-OVER PRIVILEGES—

- ruling on, 236.
- no refund when passenger subpoenaed, 258.

STORAGE—

- included in "transportation," 24, 27
- wholly within a State, 26.
- free in transit, 42.
- charges, 43.
- track charge, 43, 58.
- schedules shall show charge, 64, 66.
- free for private industry, 248.
- charges accruing, accident to passenger, 259.

STORAGE IN TRANSIT—

- ruling, 242.
- substituting tonnage, 265.

STREET CAR COMPANIES—

- hours of service law, 258.

STREET RAILWAYS—

- Arbitration Act does not apply, 140.

STREET RAILWAY ACT—

- District of Columbia, 151.

STRIKES—

- demurrage, ruling, 248.

STRUCTURE AND ORGANIZATION—

- title of Act, 3.
- purposes of Act, 3.

References are to pages.

STRUCTURE AND ORGANIZATION—continued.

- to whom the Act applies, 3.
- scope of Act, 3.
- in whom powers vested, 4.
- qualifications of Commission, 4.
- term of office, 4.
- salary of Commission, 4.
- vacancies, 4.
- removal, 4.

SUBMISSION—

- under Arbitration Act, 141.

SUBPŒNAS—

- any member may sign, 5, 100, 121.
- disobedience to, 19, 77.
- Commission may require attendance of witnesses and production of books.
papers, etc., 77.
- in order to have immunity, 122.
- no refund on stop-over ticket, 258.
- under rules of practice, 325.

SUBSIDIARY LINES—

- as to filing tariff, 188.

SUBSIDIARY TARIFF—

- may give power of attorney, 209.

SUBSTANTIALLY SIMILAR CIRCUMSTANCES AND CONDITIONS—

- long and short haul, 60.
- competition makes, 61.

SUITS—

- to enforce orders for payment of money, 17, 87.
- to recover forfeitures, 17, 20, 88, 117.
- orders other than to pay money, 17, 89.
- against the Commission, 17, 89.
- by the Commission, 18, 89, 118.
- against the State, 45.
- state law unconstitutional, 45.

SUNDAY—

- tariff effective, 256.

SUPPLEMENTS—

- to tariff, shall contain, 167, 168.
- not more than two, 167.
- no supplements, when, 168.
- filed and not effective, 169.
- filing of, 174.
- to passenger fare schedules, 195.
- to express tariff, 279.

References are to pages.

SUPPLEMENT NO. 1—

to Tariff Circular 15-A, 240.

SUPPLEMENTAL ORDERS—

Commission may make, 15, 83.

upon division in rates, 15, 84.

SUPPLEMENTS TO TARIFF—

do not require an index, 162.

SUPREME COURT—

appeal to, under Expediting Act, 123.

SURGEONS—

may have free pass, when, 27, 32, 264.

no exchange, 33.

SUSPEND—

Commission may suspend order, 6, 15, 83, 88.

order not suspended by appeal, 89.

suit to, against Commission, 90.

SWITCHES—

included in "railroad," 23, 27.

SWITCH CONNECTION, 5, 28, 41,

power of Commission, 5, 28.

duty of carrier to make, 7, 28, 41.

may be ordered by Commission, 28, 41.

conditions of, 29.

SWITCHING CHARGES—

absorption of, 260.

SWITCHING COMPANIES—

subject to Act, 133.

SWITCHING LINES—

jurisdiction over, 267.

SWITCHING MOVEMENTS—

under Safety Appliance Act, 131.

SURETY COMPANIES—

as to free pass, 268.

TARIFFS (see SCHEDULES AND JOINT TARIFF)—

must be filed, 13, 68, 174.

willful failure to file, 13, 116.

penalty for, 13, 116.

must contain all privileges, 50.

copies of, prima facie evidence, 90.

failure to post, 94.

failure to file under Elkins Act, 116.

regulations governing, 159.

References are, to pages.

TARIFFS (see SCHEDULES AND JOINT TARIFF)—continued.

- must be printed, 160.
- form and size, 160.
- when no supplements, 168.
- must be reissued when, 168.
- index to, 168.
- when carrier is absorbed by another, 169.
- what it shall contain, 169.
- local should be given I. C. C. numbers, 175.
- file in consecutive order, 177.
- two copies to be filed, 177.
- should be addressed to auditor, 177.
- of subsidiary lines, 188.
- form of passenger fare, 190, 192.
- local regulations, 191.
- filed by issuing carrier, 198.
- avoid conflict, 199.
- must show thirty days' notice, 199.
- shall specify cancellations, 194.
- reissuing, 195.
- index of, 196.
- filing of, 198.
- of fares prescribed by Commission, 200.
- amended on less than thirty days' notice, 215.
- carrier participating, 235.
- electrical power, 247.
- filed with no effective date, 249.
- must be concurred in, 249.
- understanding with shippers no effect unless published, 250.
- effective on Sunday, 256.
- effect of failure to cancel old rate, 261.
- effective date of, 262.
- posting at stations, 266.
- containing long and short haul, maxima rules, etc., 267.
- of express companies, 272 (see EXPRESS COMPANIES).

TARIFF CIRCULAR NO. 15-A—

- general provisions, 159.
- Supplement No. 1, 240.
- amended rule 7, 242.
- amended rule 8, 243.
- amended rules 9 and 38, 243.
- amended rule 11, 244.
- amended rule 37, 244.
- amended rule 38, 244.
- amended rule 39, 244.
- amended rule 82, 245.

TARIFF CIRCULAR NO. 16-A—

- general provisions, 272.

References are to pages.

TARIFFS OF EXPORT AND IMPORT—

re investigation, 316.

TARIFF LAWS—

Congress did not intend to reinforce provisions of, 55.

TEAM OR WAGON—

not included in Act, 30.

TELEGRAPH—

employees may have free pass, 27, 220, 268.

TELEPHONE—

employees may have free pass, 27, 220, 268.

TERMINAL CHARGES—

schedules shall show, 64, 66, 169.

TERMINAL COMPANIES—

when subject to the Act, 42.

TERMINAL FACILITIES—

included in "railroad," 23, 27, 42.

not to give use of to other connecting carriers, 54.

TERRITORIES—

commerce in, 31.

when admitted as a State, 31, 81.

THROUGH BILLS OF LADING—

carrier participating in, engaged in interstate commerce, 29.

THROUGH CONNECTIONS—

a State may order, 340.

THROUGH RATES—

carrier participating in, engaged in interstate commerce, 29.

not to exceed sum of the locals, 38, 215.

THROUGH ROUTES—

may be established by the Commission, 7, 84.

carriers shall provide, 27.

test of common control, etc., 30.

schedules must be posted, 64.

THROUGH ROUTES AND JOINT RATES (see generally, 67)—

Commission may establish, 84.

re investigation, 316.

THROUGH SHIPMENTS—

when no joint rate applies, 164.

THROUGH TICKETS—

when no joint fares apply, 194.

TICKETS—

redemption, 246, 263.

References are to pages

- TICKETS**—continued.
validation, 240, 263.
commutation, in interstate journey, 251.
through passenger, extension of time on, 251.
excursion invalidated, 252.
meals, hotels, etc., 252.
extensions of, 255.
limitations on, 255.
- TICKET AGENT**—
error by, ruling, 261.
- TIMBER**—
may be transported, 28.
- TIME OF TAKING EFFECT OF ACT**, 115.
- TITLE-PAGE**—
of tariffs, must show, 175.
- TONNAGE**—
substituting in transit, 242, 265.
- TORT**—
claims for damages founded in, 94
- TRACKS**—
included in railroad, 27.
- TRACK STORAGE CHARGES**—
discrimination in, 58.
- TRACKAGE AND MILEAGE**—
re investigation, 315.
- TRAINS**—
chartering, 264.
train-load rates, 50.
- TRANSFER COMPANIES**—
as to free pass for, 268.
- TRANSFER IN TRANSIT**—
included in "transportation," 24, 27.
- TRANSIT PRIVILEGES**—
must be shown in tariff, 169.
not retroactive, 263.
shipments moving under former tariff, 264.
- TRANSPORTATION**—
must be furnished upon request, 7, 27.
at less than regular rates, prohibited, 12, 73.
definition of term, 24, 27.
free, prohibited, 27.
construction of under Arbitration Act, 140.

References are to pages.

TRANSPORTATION—continued.

nothing but money can be received for, 221, 301.

TRANSPORTATION OF COAL—

re investigation, 315.

TRANSPORTATION OF DRESSED MEATS—

re investigation, 315.

TRANSPORTATION OF EXPLOSIVES—

general provisions, 157.

TRANSPORTATION OF FLOUR—

re investigation, 315.

TRANSSHIPMENT—

port of, 26.

TREASURY OF UNITED STATES—

forfeitures payable to, 88.

TROOPS—

must have precedence in time of war, 8, 66.

transportation of, 228.

TRUCKS—

of wrecked cars, 241.

UNDERBILLING FREIGHT—

re investigation, 315.

UNDERCHARGES—

collection of, 247.

delivering carrier must collect, 249.

UNDER SUBSTANTIALLY SIMILAR CIRCUMSTANCES AND CONDITIONS—

what phrase refers to, 48.

carrier must determine, 50.

through and local shipments, 51.

comparison of rates, 51.

import and export rates, 51.

facts to be considered, 51.

competition, 51.

UNDUE OR UNREASONABLE PREFERENCE OR ADVANTAGE—

declared unlawful, 10, 54.

construction of Act, 54.

question of fact, 54.

cannot be determined by mathematical calculation, 54.

competition must be considered, 54.

potential water competition, 54.

cartage, 54.

switching facilities and service, 55.

private cars, 55.

References are to pages.

UNDUE OR UNREASONABLE PREFERENCE OR ADVANTAGE—con-
tinued.

- car shortage, 55.
- delivery of cattle at stock yards, 55.
- arising from voluntary or wrongful act of carrier, 55.
- competition in, 55.
- import and export rates, 55.

UNIFORM SYSTEM OF ACCOUNTS—

- carriers must keep, 6, 102.
- Commission may prescribe, 102.

UNITED STATES—

- may have free or reduced rates, 110, 253, 261.
- transportation for by express companies, 301.

UNJUST AND UNREASONABLE CHARGES FOR TRANSPORTATION—

- prohibited, 10, 27, 83.
- penalty for, 10, 73, 83.
- enforcement of, 10, 73, 83.

UNJUST DISCRIMINATION—

- prohibited, 12, 48, 73, 116.
- may have action for damages, 25, 70, 73, 118.
- not necessarily unjust, 43.
- in track storage, 43.
- purpose of sec. 2, 48.
- round-trip tickets at reduced rates, not, 49.
- in storage, 49.
- private cars, 49.
- rebates for private cars, 49.
- underbilling weight, 49.
- false classification, 49.
- service of cars, 49.
- manufacturers' rate, 49.
- classification, 49.
- use of private cars, 50.
- in cargo or train-load rates, 50.
- stoppage in transit privilege, 50.
- disparity in rates, 52.
- punishment for, 73.
- to induce carrier, 74.

UNLAWFUL DISCRIMINATION—

- re investigations, 316.

UNLOADING CARS—

- carriers' duty, 43.

VACANCY IN OFFICE OF COMMISSION, 4, 76, 114.

VACATE—

- order not vacated by appeal, 89.

References are to pages.

VALIDATION OF TICKETS, 263.

VALUATION—

declaring false, 258.

VEGETABLES—

free pass to caretakers, 219.

carried on boats, 260.

VENTILATION—

included in "transportation," 24, 27.

VENUE OF SUITS—

to enforce orders for payment of money, 17, 87.

to recover forfeitures, 17, 88 (see FORFEITURE).

orders other than to pay money, 17, 90.

against the Commission, 17, 89.

against carriers by Commission, 18, 89, 118.

under Elkins Act, 22, 117.

of suits in Circuit Court, 89.

of suit under Sherman Anti-Trust Act, 347.

VOLUNTARY REDUCTION OF RATES—

effect of, as evidence of unreasonableness, 96.

VOTERS' TICKETS, 212.

WASHINGTON RAILWAY AND ELECTRIC COMPANY—

Street Railway Acts, 151.

WASHINGTON, D. C.—

Street Railway Acts, 151.

WATER CARRIERS—

not included in Act, 30.

WATER AND RAIL RATES—

regulations governing, 172.

WAR—

troops and material must have precedence, 8, 66.

WEIGHT—

at origin and destination, 38.

of report of findings, 92.

WEIGHING AND REWEIGHING—

cars and commodities, 59.

WITHDRAWAL OF TARIFF—

not permitted, 236.

WITNESSES—

fees of, 25, 78, 101, 325.

may have free pass, 27.

Commission may require attendance, 77, 119.

References are to pages.

WITNESSES—continued.

- production of books, etc., 77.
- from any place in the United States, 77
- immunity of, 77, 79, 121.
- may be prosecuted for perjury, 120, 349.
- existing law applicable to, 114.
- compelled to testify, 121.
- who immune, 122.
- under rules of practice, 325.
- may be required to attend, 5, 77, 119.

WOMEN'S CHRISTIAN TEMPERANCE UNION—

- not entitled to free pass, 33, 34.

YARDS—

- included in "railroad," 24, 27.

YOUNG MEN'S CHRISTIAN ASSOCIATION—

- traveling secretaries may have free pass, 27, 34.

KF 2276 1908

Author U.S. Laws, Statutes, etc. Vol.

Title The law relating to the Inter^{Copy}
state commerce commission.

Date	Borrower's Name

